Murder

Constructive Murder

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

Standard non-parole period

20 years: all offences committed on or after 1.2.2003

25 years: offences committed on or after 1.2.2003 where 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

offences where plea or conviction on or after 25.6.2006 and offence arose because of the victim's 'voluntary work'

offences where plea or conviction on or after 1.1.2008 and where victim was a child under 18 years of age

offences where the offence arose because of the victim's occupation as a council law enforcement officer (added 9.6.2009)

offences committed on or after 24.11.2025 and where victim was an intimate partner of the offender

	NAME (age if known)	PLEA	SENTENCE	APPEAL	SUMMARY OF RECORD	HOW KILLED	INVOLVEMENT & SUMMARY
1.	**PETRINOVIC** (39) [1999] NSWSC 1131 Greg James J [2001] NSWCCA 118	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.

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2.	**MCNELLEE** **TUCKER** (33) **DALLEY** (16) [2000] NSWSC 1154 Bell J (Dalley) (2002) 132 A Crim R 169 [2002] NSWCCA 284 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.	**LEWIS** (62) NSWSC Ireland J 9.6.2000 [2001] NSWCCA 448 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.	**PHUNG** (17) [2001] NSWSC 357 Wood CJ at CL	PG (25%) Murder s.97(2) Sched: 3 offences	13y NPP 8y FT 3y <u>Total</u>: 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.

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

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7.	**ASLETT** (33) [2004] NSWSC 1228 Wood CJ at CL [2006] NSWCCA 360	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	**SNPP 20 years** 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.	**EM** (19) [2005] NSWSC 212 James J [2006] NSWCCA 336	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

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9.	**SMALE** (47) [2005] NSWSC 903 Patten AJ [2005] NSWSC 923 Patten AJ [2007] NSWCCA 328 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.	**SILVANO** (26) [2006] NSWSC 832 Hulme J (2008) 184 A Crim R 593 [2008] NSWCCA 118	VG Murder s.97(2) s.33	21y 4m NPP 16y 9y 4m NPP 7y 5y 4m NPP 4y Total: 22y 4m NPP 17y	AD	Priors – no incarceration	Shooting Felony murder	**SNPP 20 years** 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.	**A** (16) [2006] NSWSC 1035 Buddin J Co-offender: HOURI	PG	12y 8m NPP 9y 6m		Priors	Stabbing Felony murder	**SNPP 20 years** 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

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12.	**BROWN** [2006] NSWCCA 395 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.	**NGUYEN** (20) [2007] NSWSC 389 Whealy J	PG (25%)	18y NPP 13y 6m		Criminal record for lesser offences – breached parole	Stabbing Felony murder	**SNPP 20 years** Stabbed shop owner during attempted robbery of newsagency – repeated stabbing - below mid-range – spontaneous and unplanned killing Long history of drug addiction
14.	**HOURI** (19) [2007] NSWSC 615 Buddin J Co-offender: A	PG Sched: 3 x BES	18y NPP 12y 6m		Nil relevant	Stabbing Felony murder / intent GBH	**SNPP 20 years** 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.	**GRUPE** (26) [2007] NSWSC 1303 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

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16.	**WEBB** (39) [2008] NSWSC 1351 Howie J	PG (15%) Murder Carried in stolen conveyance	22y NPP 16y 6m FT 18m (concurrent)		Bad record – breached bonds	Stabbing Felony murder	**SNPP 20 years** 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.	**BH** (17) [2009] NSWSC 358 Hidden J	PG (25%)	17y NPP 13y		Disturbing record – includes AR and Rob in Co – breached probation	Assault Felony murder	**SNPP 20 years** 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.	**RAAD** (41 at offence – 49 at sentence) [2009] NSWSC 830 Rothman J [2011] NSWCCA 138	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.	**THOMPSON** [2011] NSWSC 1130 Rothman J	PG (discount at highest level)	20y NPP 14y		Nil relevant	Shooting Felony murder	**SNPP 20 years** 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.	**JK** (juvenile) [2012] NSWSC 710 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

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21.	**WALSH** (34) [2012] NSWSC 1399 Bellew J [2014] NSWCCA 252	VG Murder s.86(3)	28y NPP 21y FT 8y (concurrent)	Conviction AD	Lengthy but much less serious	Unclear Constructive murder	**SNPP 20 years** 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 - *Batcheldor* [2015] NSWSC 1688
22.	**BELL** (27) [2013] NSWSC 1838 Hall J	PG (10%) Murder s97(2) s33(1)(a)	25y 4m NPP 19y 5y NPP 3y 9m 10y NPP 7y 6m Total: 27y NPP 21y 6m		Rob in co, AOABH, drugs	Shooting Constructive murder	**SNPP 20 years** 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.	**ISHERWOOD** (30) [2013] NSWSC 1868 Latham J	PG (15%)	17y NPP 11y		Drugs, assault – breached conditional liberty	Assault Constructive murder	**SNPP 20 years** 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.	**HUDD** [2013] NSWCCA 57 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 Total: 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

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25.	**HAINES** (31) **LEE** (37) [2016] NSWSC 1333 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	**SNPP 20 years** 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.	**PHAN** (30) [2016] NSWSC 483 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	**SNPP 20 years** 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.	**DENT** (53) [2016] NSWSC 444 RA Hulme J [2017] NSWCCA 166	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	**SNPP 20 years** 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

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28.	**ADAMS** (31 at offence – 64 at sentence) [2017] NSWSC 179 Button J [2017] NSWCCA 215	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.	**PETRYK** (23) [2018] NSWSC 119 Wilson J [2020] NSWCCA 157	VG Murder s.97(2)	Indicative: 26y 8y Aggregate 26y NPP 19y 6m	Conviction AD	Lengthy record – breached conditional liberty	Shooting Constructive murder	**SNPP 20 years** 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

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30.	**DS** (15) **DM** (16) [2020] NSWSC 422 Bellew J [2022] NSWCCA 156	PG (10%) Murder Agg take and drive MV Sched: Agg enter dwelling to steal PG (10%) Murder AR with wounding Wound with intent GBH Agg take and drive motor vehicle Sched: AOABH Agg enter dwelling to steal	15y 4m NPP 10y 9m 6y 4m Total: 18y 4m NPP 13y 9m 31y 6m NPP 23y 6m 11y 8m 12y 6m 9y Total: 35y 6m NPP 27y 6m	AA 13y 6m 3y Total: 14y 6m NPP 10m 20y 8m 7y 2m 7y 2m 4y Total: 27y NPP 20y 7m	dishonesty offences – carrying knife in public place lengthy record for minor violence; assault law enforcement officer, inflict ABH.	Stabbing Intent to kill Constructive murder 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. 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.

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31.	**HOPKINSON** (18y 10m) **ROBERTSON** (18y 8m) [2021] NSWSC 861 Ierace J [2022] NSWCCA 80	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	**SNPP 25 years** 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.	**COSKUN (No.5)** (28) [2022] NSWSC 1216 RA Hulme J [2024] NSWCCA 67 Co-offender: BATAK	VG Murder Att s.97(2)	Indicative 32y NPP 24y 5y Aggregate: 34y NPP 25y 6m	AD	Lengthy record	Shooting Constructive murder	**SNPP 20 years** 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

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33.	**HAMDACH** (31) [2023] NSWSC 298 Campbell J	PG (10%)	16y 2m NPP 14y		Nil relevant	Bashed / assault Constructive Accessorial liability	**SNPP 20 years** 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.	**SHILLINGSWORTH** (21) [2023] NSWSC 453 Wright J Co-offender: DPD EE DJD: s.111(2) MURDOCH: s.111(2)	PG (25%)	13y 6m NPP 9y 6m		Not stated. On conditional liberty.	Stabbed Constructive murder Accessorial liability	**SNPP 20 years** 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 – *Bugmy* 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

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35.	**DPD** (17y 6m) [2023] NSWSC 477 Wright J [2025] NSWCCA 77 Co-offender: SHILLINGSWORTH EE DJD: s.111(2) MURDOCH: s.111(2)	PG (17.5%) Murder Sched: Posss shortened firearm Assault	15y 3m NPP 10y 3m	AA 13y 7m NPP 9y	On conditional liberty.	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 *Bugmy* applied, dysfunctional upbringing – significant mental health conditions causally related to offending – drug abuse - remorse – youth – some significant prospects of rehabilitation – special circumstances CCA: Appeal allowed on parity ground.
36.	**EE** (17) [2023] NSWSC 104 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 *Bugmy* considerations – gang involvement – drug abuse – assistance
37.	**TIRIAKI** (21 at offence) [2023] NSWSC 1480 Rothman J	PG (12.5%)	17y 6m NPP 11y 8m		Unremarkable – driving, assault and break and enter	Shooting Accessorial liability Constructive murder	**SNPP 20 years** (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

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38.	**AD** (13y 11m) [2024] NSWSC 444 RA Hulme AJ [2026] NSWCCA 82 Co-Offender: BE [2023] BL [2024] SIONE [2024] DAWSON [2024]	PG (20%)	14y 4m NPP 9y 3m	AD	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) [2025] NSWSC 23 Hamill J Co-offender STANLEY	PG (25%)	14y 3m NPP 9y 6m		Lengthy record including violence – offence committed while on parole	Shot Constructive murder	**SNPP 20 years** 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

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40.	**STANLEY** (18) [2025] NSWSC 735 Yehia J Co-offender: GILKES	PG (10%)	12y NPP 8y		On probation for affray at time of offence	Shot Constructive murder Accessorial liability	**SNPP 20 years** Attempted home invasion and robbery of drug dealer with two co-offenders in early hours of morning – when light came on co-offender G shot at front door from verandah striking victim in lower leg through door – victim had approached front door inside house unbeknown to offenders – victim died enroute to hospital – no intent to kill or inflict GBH or recklessness – aware of presence of firearm and entered JCE to commit armed robbery shortly before travelling to home of victim – did not utter word of encouragement to shoot Reduced moral culpability due to Bugmy factors, youth and mental health issues – remorse – parity – special circumstances
41.	**BATAK** (26 at offence – 33 at sentence) [2026] NSWSC 595 Sweeney J Co-Offender: COSKUN	VG	12y NPP 9y (wholly concurrent to sentence for attempt AR)		Two bonds without convictions	Shooting Constructive murder Accessorial – (see facts summary)	**SNPP 20 years** Agreed with co-offender to rob occupiers of apartment believed to be drug suppliers – provided co-offender with gun, ammunition and shirts – did not attend apartment but did not withdraw from enterprise – one occupant shot dead during confrontation by co-offender – did not intend or foresee discharge of gun – motivated by financial gain - home of victim an aggravating factor – below mid-range Sentenced after first trial for accessory before the fact to AR – conviction appeal in relation to murder allowed on basis cannot be accessory before the fact to constructive murder Strong subjective case – evidence of change since time of offence – positive steps towards rehabilitation – remorse – hardship to family – difficult custodial conditions – unlikely to re-offend – facilitation of justice – ceiling principle – parity – some credit for bail conditions

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