R v Vinaccia - [2019] VSC 683

IN THE SUPREME COURT OF VICTORIA

Not Restricted

AT MELBOURNE
CRIMINAL DIVISION

S CR 2017 0110

Between:

THE QUEEN

-and-

JESSE VINACCIA Accused

JUDGE:	Croucher J
WHERE HELD:	Melbourne
DATE OF HEARING:	2 September 2019
DATE OF SENTENCE:	14 October 2019

CASE MAY BE CITED AS: R v Vinaccia

MEDIUM NEUTRAL CITATION: [2019] VSC 683

CRIMINAL LAW — Sentence following trial — Child homicide — Accused killed his girlfriend's infant son (aged three-and-a-half months) by violent shaking/handling — No external injuries — Offence classifiable as either unlawful and dangerous act or criminal negligence or both — Objective gravity lower than many other instances of child homicide or manslaughter of young/infant children — Extensive admissions made in record of interview ("ROI") with police — Trial run sparely — Remorse apparent in ROI — No prior convictions for violence — Allegation that accused, on a separate occasion, shook his own infant son not accepted — Accused had history of positive behaviour towards deceased — Accused 22 at time of offence — Delay of three years and nine months between offence and sentence — Accused used delay wisely — Accused likely to suffer hardship in prison and beyond via odium and fear — Good prospects of rehabilitation — Sentence of eight-and-a-half years' imprisonment with non-parole period of five-and-a-half years.

Appearances	Counsel	Solicitors
For the Crown	Mr R Gibson QC with Ms K Churchill	John Cain, Solicitor for Public Prosecutions
For the Accused	Mr G Casement with Mr S Burt	James Dowsley & Associates

HIS HONOUR:

Overview

1. On the evening of 23 January 2016, Kaleb Baylis-Clarke, an infant aged only three-and-a-half months, was found unresponsive in his cot by Jesse Vinaccia, the 22-year-old adult who was caring for him at the time. Mr Vinaccia was in a recently-formed relationship with Kaleb's

mother Erin Baylis-Clarke, who was aged 21. He had had Kaleb in his sole care for the previous two hours, while Ms Baylis-Clarke was at work waiting tables at a local restaurant. Mr Vinaccia contacted Ms Baylis-Clarke and said, "Kaleb's not breathing, what do I do?" She told him to ring triple-zero, which he did. He then administered CPR as directed by the operator until emergency services arrived.

2. Kaleb was resuscitated by ambulance officers and taken to the Monash Medical Centre, where he was placed on life support. Medical examination revealed that, while there were no external injuries, Kaleb had very serious brain injuries and bleeding in both retinas. Expert medical opinion was to the effect that these injuries must have been caused by violent shaking causing rapid acceleration and/or deceleration of his head, with or without impact.

3. Over the next few days, when speaking to others, including doctors at the hospital, Mr Vinaccia said nothing directly about his own behaviour that might explain Kaleb's parlous state. Even when, on 26 January, Ms Baylis-Clarke asked him directly whether he did anything that might explain Kaleb's condition, Mr Vinaccia denied shaking or being rough with him.

4. Police formally interviewed Mr Vinaccia soon afterwards. It was then that he made significant admissions. In particular, he said that, when Kaleb was in his care, he had been angry and frustrated with Kaleb's father Shannon Spackman. He admitted that, in that state, he "grabbed [Kaleb] off ... his [mat] with a bit of force"; that it was possible that he had "shaken [Kaleb] with ... quite significant force"; and that he put him down in his cot "pretty rough". He said that he believed it was possible that his actions caused Kaleb's head injuries and that he "wasn't in the right state of mind at the time and just frustrated".

5. Following the interview, Mr Vinaccia was charged with recklessly causing serious injury, as Kaleb was still alive.

6. On 30 January 2016, however, after it was recognised that his injuries were not survivable, Kaleb died following the withdrawal of life support. That unbearable, yet inevitable, decision was taken in consultation with Kaleb's parents.

7. Mr Vinaccia was then charged with child homicide. [1] Subsequently, he was committed for trial in this Court on that charge.

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[1] Contrary to s 5A of the *Crimes Act* 1958 (Vic) .

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8. The Crown case was that Mr Vinaccia understated his behaviour in the police interview, although his admissions, combined with the medical and other evidence, were sufficient to convict him. In particular, the Crown case was that, in anger or frustration, Mr Vinaccia violently shook Kaleb, thereby causing his internal head injuries and, in consequence, his death.

9. Mr Vinaccia's defence was a very narrow one. In effect, it was that his admitted inappropriate handling of Kaleb was not such as to amount to an unlawful and dangerous act or the gross level

of negligence required for child homicide. It was also argued that, given Kaleb's pre-existing afflictions, the level of dangerousness or negligence required to cause death might have been lower than otherwise. While causation was not formally admitted, it was not seriously disputed.

10. Ultimately, the jury found Mr Vinaccia guilty of child homicide.

11. On 2 September 2019, a number of victim impact statements were read or otherwise put before the Court and a plea in mitigation was conducted.

12. It is now my task to impose sentence on Mr Vinaccia for the child homicide of Kaleb Baylis-Clarke.

Summary of background and offending

13. Before announcing sentence, I turn first to a more detailed summary of the background to, and circumstances of, the offending.

Key relationships and Kaleb's birth

14. Ms Baylis-Clarke was in a relationship with Mr Spackman (aged 20) for about 18 months before separating part of the way through her pregnancy. She stayed with her mother at this time.

15. Kaleb was born on 4 October 2015. Soon afterwards, Ms Baylis-Clarke moved in with her sister and her sister's partner at 24 Genoa Way, Cranbourne West.

16. Previously, Mr Vinaccia had been in a relationship with Natalie Van Bree. The couple had a child named Wyatt, born in December 2014.

17. After that relationship ended, Mr Vinaccia contacted Ms Baylis-Clarke. They knew each other through school. A relationship soon developed. By late in 2015, Mr Vinaccia had effectively moved into the house with Ms Baylis-Clarke at Genoa Way.

18. Mr Vinaccia was involved in the day-to-day care of Kaleb, which included feeding, changing and bathing. He also became the sole carer of Kaleb while Ms Baylis-Clarke worked occasionally.

19. Photographs in evidence at trial showed that Ms Baylis-Clarke was very house-proud generally and in particular when it came to Kaleb, with his feeding bottles, clothes, toys and bedding all meticulously set out for every stage of the day. It seems that Mr Vinaccia was careful to maintain the same careful approach to Kaleb's care. Indeed, there was evidence, which I accept, that Mr Vinaccia was loving and caring towards Kaleb and a great help to Ms Baylis-Clarke.

20. During this time, Mr Spackman would visit Kaleb at Genoa Way for an hour or so once a week or fortnight.

Kaleb's early health

21. From birth, Kaleb was seen and assessed regularly by health professionals, including maternal and child health nurses and his mother's general practitioner Dr Belinda Zhou. He had a few health problems, some more troubling than others.

22. For example, Kaleb was taken to the Casey Hospital Emergency Department on 28 December 2015 over concerns about frequent vomiting. He was assessed by a doctor and released. Similarly, on 4 January 2016, Ms Baylis-Clarke took Kaleb to her GP because of his vomiting. Dr Zhou considered he was suffering from reflux.

23. On 11 January, Ms Baylis-Clarke returned to Dr Zhou over concerns that Kaleb's head appeared unusually large, as well as his vomiting and general lethargy. Ms Baylis-Clarke also photographed what appeared to be a bruise on Kaleb's ear. A referral was made to Monash Medical Centre for further investigation, but Kaleb died before the date of this appointment.

24. On the morning of 14 January 2016, Ms Baylis-Clarke noticed that the soft part of the top of Kaleb's head was raised like an egg (i.e. he had a raised fontanelle). She contacted Mr Vinaccia, who returned home, and together they took him to the Casey Hospital Emergency Department. An ultra-sound found the following:

> [B]ilateral lateral ventricular dilation with prominent extra-axial spaces bilaterally. Probable fluid in the subdural spaces. Recommend further review with MRI. No acute intraparenchymal or extra-axial haemorrhage is seen.

25. Kaleb was transferred to Monash Medical Centre. He was admitted for three days for further investigation and management. It was plain that Kaleb's head was abnormally large and that it had grown at a concerning rate. An MRI conducted on 15 January found that there was "mild ventricular dilation, aetiology unknown"; "small bilateral frontal subdural hygromas"; and "no intra-axial haemorrhage". The neurosurgical team reviewed Kaleb, and considered performing a diagnostic tap, but ultimately decided it was not required as he had improved clinically since his admission, and was no longer vomiting. Nevertheless, it struck me as surprising that, during the course of his admission, the hospital allowed Ms Baylis-Clarke to take Kaleb to a baby shower. Kaleb was discharged from hospital on 17 January for outpatient follow-up.

26. It should be noted at this point that the Crown made it clear that there was no allegation that the possible bruising to Kaleb's ear or his enlarged head were caused by any wrongful behaviour, whether by Mr Vinaccia or anyone else.

27. Upon Kaleb's return home, he appeared to feed a little more, was active and smiled and laughed, but still slept a lot. Ms Baylis-Clarke decided to stay home with him, instead of working, over the next few days.

The events of 23 January 2016

28. The morning of 23 January 2016 started usually. Ms Baylis-Clarke had no particular concerns about Kaleb. He woke at a regular hour and she gave him a bottle and remained with him. As usual, Mr Vinaccia assisted her in caring for Kaleb. Several others also saw Kaleb that morning, and he appeared to be well and was babbling, smiling and engaging. After a late-morning sleep, he awoke grizzling. He appeared to Ms Baylis-Clarke to be overtired.

29. At around 2:30 p.m., Ms Baylis-Clarke and Mr Vinaccia took Kaleb to Fountain Gate Shopping Centre for a late lunch. They returned home at about 4:00 p.m. Mr Vinaccia prepared a bottle for

Kaleb. Ms Baylis-Clarke left for work at around 4:30 p.m., leaving Kaleb in the care of Mr Vinaccia. At that time, Kaleb was on his mat playing with his dangling toys, and he was happy and alert.

30. Ms Baylis-Clarke's sister Sarah and her partner Sean Bertram left the house for dinner at about 6:00 p.m. Kaleb seemed fine, but tired.

31. While home alone with Kaleb, Mr Vinaccia engaged with Mr Spackman in a Facebook conversation. Mr Spackman had been unhappy with the level of contact he had been allowed with Kaleb. He shared a post on Facebook that stated others should not deny fathers access to their children. Mr Vinaccia responded, saying that the message was inappropriate but that he did not want to get in between him and Kaleb. Further messages were exchanged between them, including the following from Mr Spackman:

> How old does Erin want him to be for me to have him around my house and my family. This is ridiculous. And [you're] not the dad, I am, and I would appreciate it if you wouldn't post photos with my son every day.

32. As Mr Vinaccia later admitted, he became fed up and frustrated with Mr Spackman.

33. While Ms Baylis-Clarke was at work, she remained in contact with Mr Vinaccia via Facebook. At 6:45 p.m., she received a message from Mr Vinaccia saying, "Kaleb's acting funny." She asked what was wrong, to which he replied, "Bub his [meaning: Erin, he is] not breathing what the fuck!" Mr Vinaccia also rang her, saying, "Kaleb's not breathing, what do I do?" Ms Baylis-Clarke instructed him to call an ambulance and said she would leave work immediately.

34. Mr Vinaccia rang triple-zero and reported that Kaleb had stopped breathing, his heart stopped, and he was lying with his eyes closed and was unresponsive. He said that he went to check on Kaleb in bed and he was not moving. He was then given instruction on how to administer CPR on Kaleb, which he did.

35. Paramedics and members from the Country Fire Authority ("CFA") attended the home at 6:54 p.m. They saw Mr Vinaccia performing CPR upon Kaleb with assistance via his phone. Kaleb was lying on the carpet of the meals area wearing only a nappy. His eyes were open and non-responsive. He was grey in colour, particularly around the eyes and mouth. Paramedics took control of Kaleb's care.

36. Upon her arrival home, Ms Baylis-Clarke noticed that Mr Vinaccia was crying, but she could not make out any words that he uttered.

37. Kaleb had been in cardiac arrest. Paramedics were able to obtain a cardiac output and transport him to hospital for further treatment.

38. Ms Baylis-Clarke travelled with Kaleb in the ambulance to Monash Medical Centre.

Mr Vinaccia's accounts to others

39. While at the house, a CFA officer asked Mr Vinaccia what had happened, how long it had been since he had seen Kaleb, and whether there were any medical issues. Mr Vinaccia said that he

last saw the child half-an-hour before, when he had put him to bed. When he checked on Kaleb, he was unable to wake him and he was gasping heavily every five to ten seconds. He said he tried to wake him and picked him up. At that point, he realised that Kaleb was unresponsive and floppy and his breathing had stopped. He said that he called his partner first and then triple-zero.

40. Mr Vinaccia told other paramedics that he had put Kaleb to bed at 6:00 p.m., checked on him at 6: 30 p.m., and went to change his nappy, when he found him unresponsive and not breathing.

41. Mr Spackman arrived at the house with his aunt Karen McBride, who asked Mr Vinaccia what had happened. He told her that he had fed Kaleb, put him to bed and, when he checked on him half-an-hour later, he was not breathing.

42. Mr Vinaccia travelled to the hospital with Mr Spackman, Mr Spackman's mother Lisa Glendenning and Ms McBride. While in the car, Mr Vinaccia said he fed Kaleb, put him to bed, checked on him half-an-hour later, got him out of the cot to change his nappy and realised he was limp and not responding. He said he rang Ms Baylis-Clarke and then paramedics. More than once, he said that he would never forgive himself if anything happened to Kaleb.

43. At the hospital, Mr Vinaccia told Mr Bertram that Kaleb was limp when he picked him up and that he had stopped breathing. He said that, when he approached Kaleb after feeding him, Kaleb' s skin looked different and he tried to pick him up but he was limp.

44. Also while at the hospital, Mr Vinaccia was so distressed, including visibly shaking and appearing to be in shock, that he required assistance and was placed in a private room where he could rest. Kaleb's maternal great-grandmother Joyce Clarke remained in the room with him. At some point, Mr Vinaccia sat up on the bed, put his head in his hands and repeatedly said, "It's all my fault." Ms Clarke asked, "What's all your fault?" Mr Vinaccia removed his head from his hands and looked surprised to see another person in the room. Ms Clarke asked what had happened. Mr Vinaccia said that, after Erin went to work, he gave Kaleb a bottle and put him on his play mat, where he fell asleep. He then picked Kaleb up and put him in his bed and returned to the lounge room. Half-an-hour later, he thought that he had better check on him. He went into his bedroom and saw Kaleb lying there with his eyes open and thought he might need his nappy changed. He picked up Kaleb and he was dead in his arms.

45. On 25 January 2016, Mr Vinaccia told Dr Joanna Tully that he had fed Kaleb and put him to bed at 5:00 p.m. When he checked on him half-an-hour later, he found Kaleb to have soiled his nappy. He picked him up. He was floppy, his eyes were open, his arms were stiff and he was not breathing. He changed Kaleb's nappy before contacting Ms Baylis-Clarke. He then contacted triple-zero and was given instructions regarding CPR. Kaleb was vomiting and a blue-purple colour.

Initial medical evidence

46. Upon his arrival at hospital, Kaleb had a Glasgow Coma Score of three, with fixed dilated pupils, a tense fontanelle and prolonged capillary refill time. Doctors performed urgent decompression of the fluid in the brain. A CT scan revealed bilateral acute subdural haematomas (i.e. bleeding inside the skull). The following day, 24 January, an MRI revealed that Kaleb had extensive hypoxic parenchymal change (i.e. lack of oxygen). An ophthalmologist found multiple retinal haemorrhages in both eyes consistent with acceleration-deceleration forces. Treating doctors were of the view that Kaleb's internal head injuries were non-accidental.

Mr Vinaccia's account to Ms Baylis-Clarke

47. At about 1:10 p.m. on 26 January, at the request of police, Ms Baylis-Clarke engaged in a covertly-recorded conversation with Mr Vinaccia. She asked him directly whether he did anything that might explain Kaleb's condition. Mr Vinaccia looked directly at her and denied shaking or being rough with him.

Arrest and formal police interview

48. Soon after that conversation, at about 1:30 p.m., a police officer asked Mr Vinaccia, "Is there anything you want to tell me?" to which he responded, "The only thing I can think of is that I put Kaleb down in his cot a bit hard. I was angry with Shannon [Spackman] about a Facebook post. Kaleb was fine, he just went to sleep."

49. Police then arrested Mr Vinaccia and formally interviewed him. He said that, when Kaleb was in his care, he had been angry and frustrated with Kaleb's father Mr Spackman. He admitted that he "grabbed [Kaleb] off ... his [mat] with a bit of force" and that Kaleb "was a bit 'frightendish' [because of] me lifting him out of his sleep ... maybe because I did it a bit hard, rough". When the police suggested to Mr Vinaccia that he had "shaken [Kaleb] with ... quite significant force", he answered, "Possibly when I lifted him up." He admitted that, when he walked with him (meaning to the cot), it could have been "a bit bouncy and stuff"; and that he put him down in his cot "pretty rough", "a bit rough", "pretty hard", with "a bit of a swing", and "so probably hit his head a bit hard on the bed". He also said that "maybe when I put him down ..., the force of me putting him down ... could've ... moved the stuff around in his head and stuff like that". He said that he believed it was possible that his actions caused Kaleb's head injuries. Finally, when asked his "reason for committing the injuries to Kaleb", Mr Vinaccia said, "I wasn't in the right state of mind at the time and just frustrated. I should've just left him. I shouldn't have touched him or picked him up."

50. At the conclusion of that interview, Mr Vinaccia was charged with recklessly causing serious injury.

Later medical evidence

51. On 27 January 2016, Kaleb was found to have no brain activity.

52. An MRI also revealed Kaleb had had a previous brain injury and that he had suffered a lack of oxygen to the brain. (Again, the Crown did not ascribe any cause of that injury.)

53. On 30 January 2016, after consultation with his parents, Kaleb's life support was withdrawn, and he died at 10:02 a.m.

54. Forensic paediatrician Dr Joanna Tully opined that Kaleb died as a result of traumatic head injury, most likely by acceleration-deceleration and rotational forces. Given his presentation on 23 January, it was likely that the episode of trauma occurred in close proximity to his collapse and not as a consequence of his presentation and treatment on 14 to 17 January 2016.

55. Genetic testing, specifically clinical exome trio analysis, was undertaken by Professor Martin Delatycki of Victorian Clinical Genetics Services at the Murdoch Children's Research

Institute. The testing was undertaken to exclude possible connective tissue and bleeding disorders as underlying causes in the death of Kaleb. As part of the genetic testing, biological samples were taken from both of Kaleb's parents to enable "trio analysis". The result of the testing was that there was no evidence of a connective tissue disorder or a bleeding disorder.

56. On 1 February 2016, a *post-mortem* examination of Kaleb was conducted by forensic pathologist Dr Linda Iles. The examination found Kaleb had sustained a severe brain injury and extensive bilateral retinal haemorrhages. The combined *ante-mortem* and autopsy findings demonstrated that Kaleb's death was caused by a head injury in the setting of a combination of encephalopathy (i.e. global cerebral ischaemic injury), bilateral retinal haemorrhages and subdural haemorrhage. Disrupted bridging veins were also apparent at autopsy. In Dr Iles' view, it was the injury to the bridging veins through acceleration/deceleration trauma that caused the subdural haemorrhage, which reinforced her opinion that this had occurred through an acute injury rather than a re-bleeding of an earlier injury. This 'triad' of pathological change is typically produced through mechanical cranio-cervical trauma in infants. She opined that this injury can be induced by shaking with or without a cranial impact.

57. Dr Iles also explained that, while the threshold of forces required to produce this constellation of findings is not known, it is her opinion that that threshold should be considered to be considerably beyond that associated with normal handling of an infant.

58. Dr Iles went on to rule out other possible causes, and noted no history of accidental trauma was provided which might account for Kaleb's injuries. She noted that Kaleb had sustained at least one previous episode of significant head trauma prior to his ultimate collapse, but opined that this did not account for his final collapse and presentation. In the vast majority of cases in this setting, the collapse of the infant is very proximate to the injury. In this case, where, prior to the collapse and presentation, Kaleb was described as well, feeding normally and was playing on the mat, in Dr Iles' opinion, that behaviour indicates normal central nervous system functioning, which suggested that the injury must have occurred after that point in time.

59. Both Dr Iles and Dr Tully gave evidence at trial to the foregoing effect.

Charge, custody, bail; charge, custody, bail; verdict, custody

60. After Mr Vinaccia was charged initially with recklessly causing serious injury on 26 January 2016, he was bailed on 24 March 2016. After being charged with child homicide on 14 June 2016, Mr Vinaccia was returned to custody and then bailed again on 5 October 2016. He was committed for trial on 23 June 2017. Following the guilty verdict on 26 June 2019, Mr Vinaccia was returned to custody.

Two trials

61. After trial dates in November 2017 and September 2018 were vacated, this matter came on for its first trial in March/April this year. Unfortunately, however, the jury was discharged without verdict. This was because, during jury deliberations, it was revealed that, contrary to standard instructions prohibiting such behaviour, a juror searched the internet on a medical topic crucial to an issue at trial, and shared the results with her fellow jurors.

62. The second trial was conducted in June. As I have said, the verdict was returned on 26 June 2019.

Victim impact statements

63. I turn now to the victim impact statements, which form part of the materials to which I must have regard in sentencing.

64. Members of Kaleb's family filed a total of eight victim impact statements.[2] All bar two were read to the Court, whether by the author or another family member. In particular, the statements were made by Kaleb's mother Erin Baylis-Clarke; his father Shannon Spackman; his maternal grandparents Keith Baylis-Clarke and Deborah Holden; his paternal grandmother Lisa Glendenning; his great-aunt Karen McBride; his maternal great-grandmother Joyce Clarke; and his aunt Sarah Baylis-Clarke. I have read all of the statements again in chambers. In these reasons, I shall summarise more fully only the statements of Kaleb's parents.

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[2] The victim impact statements became Exhibits 1-8 on the plea in mitigation.

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65. For Kaleb's mother Erin, her pregnancy was a surprise, because she was told (erroneously, it seems) during her teenage years that she had a condition that made pregnancy unlikely. But, as she says, her misdiagnosis turned into an unexpected blessing. She was smitten with Kaleb and learned a new meaning of the word love. But all that turned to tragedy when Kaleb was rushed to hospital and never recovered. When it was clear that he could not recover, Ms Baylis-Clarke and Mr Spackman were each given half a night to be with Kaleb before life support was withdrawn. Ms Baylis-Clarke was so unwell at his funeral that she spent the day in hospital on morphine. In the weeks following, she would take a blanket to the cemetery and lie at his graveside for hours on end, just wanting to be with him. She has lost trust in the world and often has nightmares. She is so grief-stricken that she cannot concentrate, or study or work. She has had six miscarriages since, which doctors have told her are stress-related. She has suicidal thoughts, but puts them out of her mind because she now knows how it would feel for her loved ones if she carried through with those thoughts. She often wonders what kind of boy Kaleb would have been.

66. Mr Spackman's heart sank when he was told his son was not breathing. He prayed each day that he would pull through. The decision that he and Erin had to make to turn off his life support was the hardest thing he has ever had to do. No parent should ever have to bury a child, no matter what age. After Kaleb's death, he was not coping with life without him. He could not work, had nightmares and became so suicidal that his mother called the CAT team. Every time he saw a child, he would break down in tears. He would go to the shops and realise that he could never buy Kaleb his first bike or football. He will miss out on his first words, his first step, his first day at school. Knowing he will never be able to hold his little boy again breaks his heart, every day.

67. The other victim impact statements also reveal the terrible sense of loss and sadness suffered by Kaleb's loved ones. They are all powerful and moving documents.

68. In so far as it is permissible to do so, I have had regard to the contents of all of the victim impact statements in considering sentence.

69. I wish to add this. There is nothing this Court can say or do that will heal Kaleb's family's grief and pain. The sentence I must impose is not a reflection of the worth of Kaleb's life — as if anything so precious could ever be valued in any event. Rather, the sentence I am about to impose is a reflection of a large number of factors which I am required by law to take into account, only one of which is the impact on victims.

Nature and gravity of offence; offender's culpability and degree of responsibility

70. I turn now to an assessment of the nature and gravity of the offence, and Mr Vinaccia's culpability and degree of responsibility for that offence.

71. Child homicide is a hybrid statutory and common law offence, the maximum penalty for which is set by statute at 20 years' imprisonment. [3] A person is guilty of child homicide if, by his conduct, he kills a child who is under the age of six years in circumstances that otherwise would constitute manslaughter at common law. There is thus an inherent seriousness in the offence.

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[3] See s 5 of the *Crimes Act* 1958 (Vic).

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72. This particular offence is also serious because a totally helpless three-and-a-half-month-old child has lost his life at the hands of an adult entrusted with his care. The law has a special duty to protect the very young and vulnerable, and to hold to account adults who cause harm to children entrusted to their care. In this regard, it is as well to consider the remarks of Vincent J when sentencing in *R v Dempsey* ,[4] a case which involved the manslaughter by a father of his infant son. His Honour said this: [5]

> I have on many occasions when handing down sentences upon persons who have through unlawful actions brought about the death of another, referred to the inviolability of human life as a fundamental precept of our society and our law. When the life lost is that of a child for whose welfare the perpetrator was as parent, guardian and simply as an adult human being personally responsible, the situation must be viewed very gravely. After all, the true value of any community must be assessed in terms of the degree of genuine recognition that it gives to the rights and dignity of its most vulnerable and disadvantaged members. The courts, in my opinion, have an obligation through the sentences that they impose upon persons who act as [Mr Dempsey has] done, to endeavour to protect those who are so exposed, be they young or old, against the violent abuse of physical power. Perpetrators who criminally beat or otherwise hurt children as a means of relieving their own sense of frustration or anger must anticipate the possibility that the law will respond in a fashion designed to vindicate the victim's rights and demonstrate the commitment of the society, which they represent, to its stated values.

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[4] *R v Dempsey* [2001] VSC 123.

[5] *R v Dempsey* [2001] VSC 123 at [7] .

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73. In my view, while that particular case involved a far more serious example of the killing of a child than the present case, and while those remarks were made 18 years ago, they nevertheless should be borne in mind today in cases of this nature.

74. The alternative forms of the offence left to the jury in this case were child homicide by an unlawful and dangerous act and child homicide by criminal negligence. In particular, it was alleged that the violent shaking or handling of Kaleb that caused his death amounted either to an unlawful and dangerous act [6] or to criminally negligent behaviour. [7]

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[6] See *Wilson v The Queen* (1992) 174 CLR 313.

[7] See *Nydam v The Queen* [1977] VR 430.

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75. Mr Casement, who appeared with Mr Burt at trial for Mr Vinaccia, urged me to find that his client's behaviour amounted only to criminal negligence, and not to an unlawful and dangerous act. Ms Churchill, with whom Mr Gibson QC appeared at trial, urged me to find an unlawful and dangerous act.

76. In my view, both forms of child homicide were open on the evidence. However, while the unlawful and dangerous act form of the offence often will be more serious than the criminal negligence form, in this case, I consider each to be of the same level of gravity. This is because, while child homicide by an unlawful and dangerous act will often involve an intention to harm the child whereas the criminally negligent version often will not, in this particular case, I am not satisfied that Mr Vinaccia intended to cause any harm to Kaleb whatsoever. Instead, he just reacted briefly and without thinking, albeit in an unlawful and dangerous and a grossly negligent fashion.

77. I do not accept Mr Casement's submission that the existence of Kaleb's pre-existing injuries in effect reduces the level of culpability required to establish the offence in this case. While, as I understood her evidence, at one point, Dr Iles appeared to concede that the pre-existing head injury may be a factor relevant to the level of force required to cause the injuries, I also understood her to dismiss that as rather unlikely, if not remote. In any event, I am satisfied that Mr Vinaccia's behaviour met the thresholds in each head of child homicide.

78. Nor do I accept Mr Casement's submission that I should sentence, not on the basis that Mr Vinaccia violently shook Kaleb, but on the basis of his admissions in the police interview. He submitted that the jury were left to convict on that basis. I think that is splitting hairs. On one view of the interview, he did admit to violent shaking. In any event, the admissions were to be considered, not in isolation, but against and with the rest of the evidence, including the medical evidence.

79. Having considered the evidence in that way, I am satisfied, upon the combination of Mr Vinaccia' s admissions and the medical and other evidence, that, for a brief moment, in a fit of pique and frustration, he lost his self-control and shook Kaleb sufficiently violently to cause the internal injuries with which he presented. Consistently with his admissions, that level of shaking occurred at some point between picking him up, moving him to the cot and putting him down in the cot.

80. As culpable as that behaviour is, however, it is not as serious as many other examples of child homicide or manslaughter of children seen in the past. It is hard to believe, but some instances of those offences have involved adults committing grave assaults on tiny defenceless children, including throwing a child across a room so that he struck his head on a hard-edged surface or, even worse, stomping on a child's limbs, stomach and other parts of the body. This case is nothing like those.

81. Ms Churchill submitted that an aggravating feature of this offending is that Kaleb had been sufficiently unwell to be in hospital for three days only a week or so prior to the offence, which Mr Vinaccia knew. While I accept that a reasonable person entrusted with Kaleb's care would be extra careful with him following his release from hospital, the fact is that he was effectively given a clean bill of health by the hospital. Further, he cannot have been regarded as too unwell by the hospital given that he was allowed to attend a baby shower during his stay. In those circumstances, whether or not the hospital's approach in either respect was sound, it would seem to be unduly harsh to fix Mr Vinaccia, who is not medically-trained but a relatively young man, with a special need to be extra-careful. That said, I accept that common sense says that one should be careful with one so young who has only recently been hospitalised, which he knew.

82. Ms Churchill also submitted that Mr Vinaccia's behaviour was also aggravated by the fact that he had shaken his own child previously and been warned against the risks of that behaviour at that time. I would agree with that submission if I accepted the factual basis for it, but I do not.

83. Maryanne Florrison, the maternal grandmother of Mr Vinaccia and Ms Van Bree's child Wyatt, gave evidence that, when Wyatt was about three weeks of age, she heard him crying and then saw Mr Vinaccia holding Wyatt out in front of him under the armpits and shaking him and telling him to "shut the fuck up" in a very aggressive tone. (Ms Florrison demonstrated very vigorous shaking.) She told him to stop, demanded that he give Wyatt to her and told him repeatedly that it was dangerous and that "you can kill a child doing that".

84. As I have indicated in the course of the plea, I do not accept that evidence. Ms Florrison struck me as a very unimpressive witness. She changed her account from Wyatt being ten weeks old to three weeks at the time. Despite her explanation for doing so, which was dubious at best, it is unlikely in the extreme that, soon after the alleged incident, any responsible adult would have made the Facebook posts she made, which praised Mr Vinaccia, if she had witnessed any incident of the type she alleged. Also, her account was completely unsupported by any other evidence, when, on her account, it might have been. For example, while Ms Florrison claimed that Ms Van Bree came in and took the child from her and that she told her what had just happened, there was no evidence from Ms Van Bree to that effect. Further still, given the medical evidence in this trial, if the alleged shaking had occurred, Wyatt, at three weeks of age, should have been seriously injured or killed. But there was no such evidence. Finally, Ms Florrison struck me as a witness who was given to exaggeration.[8]

[8] At the first trial, Ms Van Bree gave evidence of a separate occasion on which, she alleged, Mr Vinaccia shook Wyatt. If she was not the worst witness I have seen, she was among the contenders. Sensibly and fairly, having seen that performance, the Crown chose not to call her at the second trial.

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85. Again, however, I accept that any adult, even at only 22, would understand that it is dangerous to shake a baby in a vigorous or violent fashion.

86. **Following paragraph cited by:**

Victorian Sentencing Manual (03 March 2020)

Jagroop 88-89 [50]-[51], [57], 90 [62] ; Hughes [118] ; Walker [23] ; Naddaf [55]-[56] ; R v Rowe [2018] VSC 490, [27] ('Rowe'); Vinaccia [86] .

Ms Churchill submitted that another aggravating feature of the offending was Mr Vinaccia's failure to tell the medical practitioners what, in fact, had occurred. Perhaps worse still, he directly lied to Ms Baylis-Clarke, the child's mother and his partner. While there is no suggestion that Kaleb's life could have been saved with an earlier disclosure, I accept that Mr Vinaccia's initial omissions and lies aggravate his offending.

87. **Following paragraph cited by:**

Victorian Sentencing Manual (03 March 2020)

R v Alexander (1994) 78 A Crim R 141, 144 ('Alexander'); Donker 288-89 [57], [61], [65], 291 [74] ; R v Vinaccia [2019] VSC 683, [87] (' Vinaccia').

Victorian Sentencing Manual (03 March 2020)

R v AB (No 2) (2008) 18 VR 391, 401-02 [30]-[32], [35] ('AB'); R v Mohamed [2008] VSC 299, [14] ; Donker 288-89 [57], [63], [67], 291 [74] ; DPP (Vic) v Lovett [2008] VSCA 262, [33], [42] ; Loveridge 51 [150]-[157] ; Walker [15], [22] ; R v Cicekdag [2017] VSC 781, [50] ('Cicekdag'); McKnight [31], [35] ; R v Naddaf [2018] VSC 429, [28] ('Naddaf'), citing Jagroop 90-91 [66] (Weinberg JA); Vinaccia [87] .

Victorian Sentencing Manual (03 March 2020)

Ibid [116] . But see Vinaccia [87] .

On the other hand, there are other features of the offending that tend against a higher level of gravity. They include following. First, as I have said, there is an absence of the grave level of violence often seen in other child homicide cases. Secondly, the offending was not planned or

premeditated. Instead, it was spontaneous, occurring in a moment of frustration, and was neither protracted nor prolonged but, rather, was brief. Thirdly, while he did not tell family members or the doctors the truth, Mr Vinaccia did ring for assistance and offered his own assistance in a timely way. Fourthly, this offending, unlike many other instances of child homicide or manslaughter (or worse) of children, Mr Vinaccia did not have a history of harming or abusive behaviour towards the deceased. On the contrary, as I indicated earlier, there was compelling evidence that he was very caring to Kaleb and that he helped Ms Baylis-Clarke a great deal with his care.

88. Thus, for the foregoing reasons, while it is still a very serious offence, I regard this instance of child homicide as falling around the mid-range of the spectrum of objective gravity for that offence.

Mitigating factors

89. I turn now to the factors in mitigation on which Mr Vinaccia is entitled to rely. Before doing so, I shall set out in some detail his background as outlined by Mr Casement on the plea and in the plea materials.

Background

90. Mr Vinaccia was born on 6 June 1993. He is presently aged 26 and was 22 at the time of the offending.

91. His parents are aged 52 and 54. He has two sisters, one older (aged 29) and the other younger (aged 19).

92. After enduring a long history of domestic abuse directed to his mother and the children, Mr Vinaccia's parents separated when he was only 16.

93. The abuse by his father towards Mr Vinaccia as a child was significant. He was beaten with objects, including, on one occasion, a metal spatula, which became lodged in his head. The spatula had to be removed and the wound stitched.

94. His schooling was difficult owing to the problems in his family unit. He attended Courtney Gardens Primary School and later Cranbourne Secondary College. He was in Year 10 when his parents separated.

95. In the three or so years that followed, Mr Vinaccia, despite the abuse that he endured, elected to live with his father. That caused predictable divisions in the relationship with his mother.

96. After leaving school, he took on a carpentry apprenticeship for 12 months. Long-term employment has eluded him owing to battles with depression and feelings of inadequacy. He has performed labouring jobs such as carpentry, bricklaying and house painting. His longest period of employment was for three years installing roof insulation. Later employment was significantly hampered by his many court appearances in this matter.

97. Mr Vinaccia has never had a problem with alcohol or drugs.

98. At about the age of 20, he met Ms Van Bree and moved in with her family. His father was unsupportive of this relationship and dumped his belongings on the lawn of the house. Mr Vinaccia and Ms Van Bree also lived with Mr Vinaccia's mother. That was not to last long after they learned Ms Van Bree was pregnant. The couple then moved to Ms Van Bree's father's home. The fractures that emerged in Mr Vinaccia's relationship with his mother were not fully healed by the time the present offending occurred.

99. The relationship with Ms Van Bree concluded about a month after Wyatt was born. Despite an initial period of being able to see Wyatt, that ceased as animosity grew. Ultimately, Mr Vinaccia engaged in a mediation process that saw him able to see Wyatt fortnightly, unsupervised.

100. Within a short period of time, Mr Vinaccia formed a very close relationship with Ms Baylis-Clarke. For a short while, there was stability in their respective lives.

101. Having set out that background, I turn now to the mitigating factors.

Extensive admissions

102. The first matter in mitigation is that, in his interview with police, Mr Vinaccia made extensive admissions. Those admissions formed an important part of the case against him. Absent those admissions, the Crown case would have been a good deal more difficult to make out against Mr Vinaccia.

Remorse

103. The second matter in mitigation concerns remorse. While Mr Vinaccia pleaded not guilty and while he deliberately omitted important matters from his early accounts to others and directly lied to Ms Baylis-Clarke, I am nevertheless satisfied that he is remorseful for his crime. There are four reasons.

104. First, Mr Vinaccia's presentation at Genoa Way and while at the hospital was one of distress and concern for Kaleb. Thus, Ms Baylis-Clarke said that, when on the phone, "it sounded like [Mr Vinaccia] was having a heart attack and sounded like he was crying". Ricky Read, a CFA officer who attended the house, saw him visibly distraught and crying when he spoke to him. Mr Spackman said that Mr Vinaccia was in a state of shock and crying. And Ms McBride said he was visibly distraught. Also, when at the hospital, he was "in a bad way", shaking and had to be looked after and provided with Valium.

105. Secondly, not only did he make extensive admissions in his police interview, but Mr Vinaccia's presentation and demeanour in that interview is of a man who is profoundly sorry for, and utterly devastated by, what he had done to Kaleb.

106. Thirdly, Mr Casement explained, and I accept, that, regrettably, Mr Vinaccia has struggled to live with own conduct, and has made an attempt on his own life. The latter consisted of driving his car into a tree at high speed.

107. Finally, in sentencing an offender, a court may have regard to his conduct on or in connection with the trial as an indication of remorse or lack of remorse on his part. [9] Although the trial was

contested, it was run sparely, as I have observed already. Mr Vinaccia did not seek to deflect responsibility onto any other person; he conceded witnesses (including medical ones); and he ensured the considerable shortening of a potentially long and difficult trial. It might be said that the evidence against him, including his admissions, rendered that course necessary. But Mr Vinaccia nevertheless chose to run a very narrow defence, which I explained earlier. While he did not concede causation, he did not press it vigorously where others might have done so. What was left was precisely what behaviour he engaged in (which, as I have implied, was very much circumscribed by his admissions) and whether that behaviour amounted to the requisite level of dangerousness or negligence — all of which were quintessentially jury questions.

No prior convictions for violence

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[9] See s 5(2C) of the *Sentencing Act* 1991 (Vic) .

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108. The next factor in mitigation is that Mr Vinaccia has no prior convictions for violent offending. He has some prior convictions for other matters, but they are irrelevant for present purposes.

Relative youth

109. The fourth factor in mitigation is that, at 22, Mr Vinaccia was a relatively young person at the time of the offending, and is now still only 26. All else being equal, a younger person is less likely to appreciate risk or consider consequences. In my view, Mr Vinaccia, at 26, is at an age where his values and attitudes are still being formed. It is of course a pity that he will be developing those values and attitudes for a substantial part of his life while in gaol, but that, of course, is an unavoidable consequence of the nature and gravity of his criminality. He must go to gaol, and for a substantial period. However, one of the great aims of the criminal law is to rehabilitate younger offenders. And Mr Vinaccia is still young enough to persuade me that rehabilitation is an important consideration in his case.

Excellent prospects of rehabilitation

110. A fifth, but very important, matter in mitigation is that I am satisfied that Mr Vinaccia has good prospects of rehabilitation. There are several reasons for that conclusion.

111. First, his extensive admissions, limited criminal history and remorse all suggest good prospects of rehabilitation.

112. Secondly, it is apparent, from the references, that Mr Vinaccia enjoys the support of his family and a large number of people in his church community. Such support will be all the more important during his sentence and when he is released.

113. Thirdly, Mr Vinaccia has no history of substance abuse or alcohol concerns that might otherwise interfere with his capacity to rehabilitate himself.

114. Fourthly, I am satisfied that Mr Vinaccia is unlikely to offend in this way again. He seems to me to be a young man who, understandably, is very troubled by what he has done. I think he is also the type who is likely to take up later opportunities in life to atone for what he has done, whether by living a positive life himself or by being a role model to and helping others, or both. The references show that he has a strong interest in, and an ability in, helping others.

115. Finally, I am satisfied of the other steps Mr Vinaccia has taken to further his own rehabilitation, which I shall deal with under the heading of delay, to which I now turn.

Delay

116. Thus, the sixth matter in mitigation concerns the delay of three years and nine months between the offence and sentence. The trial was twice adjourned, and a jury was discharged at the first trial.

117. There are two respects in which the considerable delay is a mitigating factor. First, I accept that there must have been great strain on Mr Vinaccia in not knowing his fate for these past years.

118. Secondly, and perhaps more significantly in this case, Mr Vinaccia has used the period of delay wisely. I accept that Mr Vinaccia has taken active steps to advance his own rehabilitation since the offending occurred. First, he has not offended in the interim. Secondly, the references show that he has turned to religion, and become an active and participating member of his local church. Thirdly, he has focused on areas of personal development by engaging with professionals in his local community. Fourthly, he has sought psychological assistance in dealing with issues in his background and the consequences of his conduct. Fifthly, he has the formed a new relationship with a woman who attended his trial and is supportive of him. Finally, he has strengthened the bonds of his family support which, Mr Casement advised, were somewhat lacking at the time of his offending.

Burden of imprisonment:Opprobrium and fear of reprisals

119. The final matter in mitigation concerns the particular hardship that Mr Vinaccia has experienced, and is likely to continue to experience, in prison.

120. Mr Casement is instructed, and I accept, that, in 2016, when Mr Vinaccia was first incarcerated, he was set upon by three inmates who heard of the nature of the allegations against him.

121. Given the nature of what is now his conviction, and the "code" that often applies in prison, I accept that it is likely that Mr Vinaccia will continue to be a target for cowardly types. As a result, he will suffer the fear of harm, and at least the opprobrium of other prisoners, which in turn will make it likely that he spends a substantial period of his time in prison isolated from many others.

Sentencing purposes

122. I turn now to the purposes of sentencing.

123. Section 5(1) of the *Sentencing Act* 1991 (Vic) provides that the only purposes for which sentence may be imposed are, to use the shorthand, general deterrence, specific deterrence, denunciation, protection of the community, just punishment and rehabilitation.

General deterrence, just punishment and denunciation

124. **Following paragraph cited by:**

Victorian Sentencing Manual (03 March 2020)

Hughes [120]-[121], [161], [183] ; Woodford [90] ; Rowe [28] ; Vinaccia [124] .

In my view, general deterrence, just punishment and denunciation are important considerations in this case of child homicide. The community should understand that behaviour of the type engaged in by Mr Vinaccia is denounced by the courts and will result in a substantial term of imprisonment that reflects that a very young and vulnerable child's life has been taken by the unlawful and dangerous act or criminal negligence of a person entrusted with his care, and that the lives of the deceased child's loved ones have been marred forever.

Specific deterrence and protection of the community

125. Given Mr Vinaccia's admissions, remorse, limited criminal history and good prospects of rehabilitation, the particular hardship imprisonment will bring through opprobrium and fear of the risk of harm, and my conclusion that he is unlikely to offend in this way again, I consider that specific deterrence is a sentencing purpose of only very modest significance in the present case.

126. The same considerations satisfy me that protection of the community is also only of modest significance and does not warrant weight as a separate and additional sentencing purpose in this case. The other sentencing purposes, including rehabilitation, will produce a sentence that has the effect of protecting the community in any event.

Rehabilitation

127. In my view, rehabilitation remains an important consideration. This is particularly so because Mr Vinaccia was so young at the time of the offence, is still relatively young now, and his prospects of rehabilitation are good.

128. It is also important to recognise the interplay between rehabilitation and protection of the community in the wider sense. Mr Vinaccia will be returning to the community ultimately. It is therefore in the community's interests that such prospects of rehabilitation as there are be maximised, so that, when he does return to the community, his risk of reoffending is as low as it reasonably can be and his chances of successful reintegration into the community are good.

Parsimony

129. Section 5(3) of the *Sentencing Act* , relevantly, provides that "a court must not impose a sentence that is more severe than that which is necessary to achieve the purpose or purposes for which the sentence is imposed". This reflects the common law principle of parsimony. I have applied this provision and this principle when considering the appropriate sentence in this case.

Current sentencing practices

130. In so far as I can determine them, I have had regard as well to current sentencing practices for child homicide and, to a lesser extent, manslaughter of young children in cases before child homicide existed.

131. Sometimes, case comparisons can be a useful tool in gauging current sentencing practices. To this end, counsel referred me in particular to the sentence imposed by T Forrest J in *R v Rowe* [10] as a useful comparator.[11] The case is very similar to the present in many respects.

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[10] *R v Rowe* [2018] VSC 490.

[11] Both counsel also referred to several other cases, which I also considered. Those cases are listed in counsel's written submissions (see Exhibits 9 and 10 on the plea in mitigation).

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132. Mr Rowe was convicted at trial of the child homicide of his three-month-old daughter Alanah. He was a caring and devoted parent. However, while in his care, Alanah became pale and stopped breathing. Various attempts were made to revive her, but she had to be placed on life support. Ultimately, life support was withdrawn and she died. There were no external injuries, but numerous internal injuries of the same type suffered by Kaleb, although there was evidence of additional harm to Alanah's spinal cord as well. As it happened, Dr Tully and Dr Iles also gave evidence in that case. As his Honour explained, in simple language, the two doctors opined that Alanah's death was the result of injuries caused by violent shaking with or without impact on a soft surface. Neither doctor considered that there was any other reasonable explanation.

133. Mr Rowe was 23 at the time of the offence. He concealed the true cause of the offending from doctors and family. He had a minor criminal history. There was a three-year delay between the offending and sentence, with a jury unable to reach a verdict at an earlier trial. This caused significant anxiety and stress to Mr Rowe. A psychologist opined that Mr Rowe had a low risk of recidivism, which the judge accepted. However, he made no admissions and was not found to be remorseful (although he was grief-stricken). The judge imposed a sentence of nine years' imprisonment with a non-parole period of six years.

134. Mr Casement submitted that the existence and relevance of pre-existing injuries in the present case, the admissions made, the conduct of proceedings and Mr Vinaccia's remorse all provide a sound basis for imposing a sentence somewhat lower than the disposition in *Rowe*.

135. Ms Churchill accepted that the two cases were very similar, but was careful to point out, correctly, that sentences are neither precedents to apply or distinguish nor starting points for other sentences from which to work upwards or downwards.

136. I accept that *Rowe* is a more useful comparator than many other cases. As it happens, I also think that the two cases warrant similar sentences. Two of the more important differences between the cases, however, are the fact that Mr Vinaccia made extensive admissions (whereas Mr Rowe did not) and that I found Mr Vinaccia to be remorseful (whereas Mr Rowe was not).

137. I could go on with comparisons between the present case and *Rowe* and other cases. But, in the area of sentencing, it is almost always difficult usefully to compare other cases. No two cases are

ever truly alike. And, in any event, as Ms Churchill said, sentences are not precedents to be applied or distinguished. Nevertheless, I have found *Rowe* and the other sentences I have considered, and the reasons given for imposing them, instructive in gauging the order of sentences imposed for child homicide, particularly where the offending is not at the higher or upper end of the range of gravity, and the extent to which those sentences tend to be affected by various aggravating and mitigating factors. In the end, however, as is always the case, because of the limits of that process, I have been driven to rely principally on the particular circumstances of this case and sentencing principles to arrive at the appropriate sentence for Mr Vinaccia's offence of child homicide.

Sentence

138. I turn now to sentence.

139. Mr Vinaccia, would you stand, please.

140. Balancing all factors as best I can, for the child homicide of Kaleb Baylis-Clarke, Mr Vinaccia is convicted and sentenced to eight-and-a-half years' imprisonment.

141. I fix a non-parole period of five-and-a-half years.

142. That non-parole period is a little less than usual, both as a proportion of the head sentence and in absolute terms. While all factors, both aggravating and mitigating, have affected the head sentence and, in turn, the non-parole period, I think Mr Vinaccia's remorse, prospects of rehabilitation, and the hardship he has experienced, and is likely to continue to experience, in prison, are such that it is appropriate to fix a non-parole period that is a bit shorter than might otherwise be imposed.

143. Pursuant to s 18 of the *Sentencing Act* , I declare that 284 days of pre-sentence detention (including today) be reckoned as served under this sentence.

Cited by:

Victorian Sentencing Manual [2019] JCV Victorian_Sentencing_Manual_v2 (03 March 2020)

R v Alexander (1994) 78 A Crim R 141, 144 ('Alexander'); Donker 288-89 [57], [61], [65], 291 [74] ; R v Vinaccia [2019] VSC 683, [87] (' Vinaccia').

Victorian Sentencing Manual [2019] JCV Victorian_Sentencing_Manual_v2 (03 March 2020)

R v AB (No 2) (2008) 18 VR 391, 401-02 [30]-[32], [35] ('AB'); R v Mohamed [2008] VSC 299, [14] ; Donker 288-89 [57], [63], [67], 291 [74] ; DPP (Vic) v Lovett [2008] VSCA 262, [33], [42] ; Loveridge 51 [150]-[157] ; Walker [15], [22] ; R v Cicekdag [2017] VSC 781, [50] ('Cicekdag'); McKnight [31], [35] ; R v Naddaf [2018] VSC 429, [28] ('Naddaf'), citing Jagroop 90-91 [66] (Weinberg JA); Vinaccia [87] .

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Jagroop 88-89 [50]-[51], [57], 90 [62] ; Hughes [118] ; Walker [23] ; Naddaf [55]-[56] ; R v Rowe [2018] VSC 490, [27] ('Rowe'); Vinaccia [86] .

Victorian Sentencing Manual [2019] JCV Victorian_Sentencing_Manual_v2 (03 March 2020)

Hughes [111], [120] ; Rowe [19] ; Vinaccia [71]-[72] , [114] .

Victorian Sentencing Manual [2019] JCV Victorian_Sentencing_Manual_v2 (03 March 2020)

Ibid [116] . But see Vinaccia [87] .

Victorian Sentencing Manual [2019] JCV Victorian_Sentencing_Manual_v2 (03 March 2020)

Hughes [155]-[156], [158] ; Rowe [23] ; Vinaccia [119]-[121] .

Victorian Sentencing Manual [2019] JCV Victorian_Sentencing_Manual_v2 (03 March 2020)

Hughes [120]-[121], [161], [183] ; Woodford [90] ; Rowe [28] ; Vinaccia [124] .