

HIGH COURT OF AUSTRALIA

GAGELER CJ,
EDELMAN, GLEESON, JAGOT AND BEECH-JONES JJ

THE KING

APPELLANT

AND

HCZ

RESPONDENT

The King v HCZ
[2026] HCA 24
Date of Hearing: 10 April 2026
Date of Judgment: 5 August 2026
B44/2025

ORDER

- 1. Appeal allowed.*
- 2. Set aside orders 2 and 3 made by the Court of Appeal of the Supreme Court of Queensland on 15 August 2025 and in their place order that the appeal to the Court of Appeal be dismissed.*

On appeal from the Supreme Court of Queensland

Representation

G J D del Villar KC, Solicitor-General of the State of Queensland, with A C Freeman KC, F J Nagorcka and J-A B Reeves for the appellant (instructed by Crown Law (Qld))

A M Hoare KC with M W C Harrison and S A Lynch for the respondent (instructed by Hannay Lawyers)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

The King v HCZ

Criminal law – Sentence – Child offender – Where offender committed offences including murder – Where murder "a particularly heinous offence" under s 176(3)(b)(ii) of *Youth Justice Act 1992* (Qld) – Where offender sentenced to term of detention – Where s 227 of *Youth Justice Act* prevented release until offender had served 70 per cent of that term unless sentencing judge considered that "special circumstances" exist – Where sentencing judge concluded that "special circumstances" did not exist – Where appellate court held that sentencing judge allowed seriousness of offending to overwhelm mitigating factors – Whether open to appellate court to interfere with sentencing judge's conclusion that "special circumstances" did not exist.

Words and phrases – "ability to rehabilitate", "appellate review", "correctness standard", "deprived upbringing", "discretion", "judicial restraint", "manifestly excessive", "mitigating factors", "murder", "open-ended evaluative criteria", "particularly heinous offence", "period of detention", "personal circumstances", "pleas of guilty", "range of outcomes", "sentencing", "seriousness of the offending", "special circumstances", "standard of appellate review", "statutory default", "statutory interpretation", "unreasonable or plainly unjust".

Youth Justice Act 1992 (Qld), Pt 7, Sch 4.

Introduction

1 On 26 December 2022, the respondent, HCZ, aged 17 years and eight months, committed offences including the offence of murder. The murder was found by the sentencing judge in the Supreme Court of Queensland to fall within s 176(3)(b)(ii) of the *Youth Justice Act 1992* (Qld) as "a particularly heinous offence having regard to all the circumstances". HCZ was sentenced to a term of detention of 14 years. Section 227(1) of the *Youth Justice Act* provided a default rule preventing HCZ from being released from detention until he had served 70 per cent of that period of detention. The sentencing judge considered all the relevant circumstances but concluded that "special circumstances" under s 227(2) did not exist to enable up to a 20 per cent reduction of the default period of detention to be served before release.

2 The issue in this Court arises from the decision of a majority of the Court of Appeal of the Supreme Court of Queensland. In the context of considering whether the sentence was manifestly excessive, the majority held that in determining whether "special circumstances" existed under s 227(2) the sentencing judge had allowed the seriousness of the offending to overwhelm HCZ's early pleas of guilty, his deprivation in upbringing, and the positive signs of his ability to rehabilitate. The issue concerns the application of the applicable standard of appellate review to a decision under s 227(2).

3 It was properly common ground in this Court that the applicable standard of appellate review of a decision under s 227(2) of the *Youth Justice Act* is the standard involving judicial restraint, which restricts intervention by the appellate court to the five grounds set out in *House v The King*.¹ Although there was dispute between the Crown and HCZ as to whether the majority of the Court of Appeal applied that standard or a correctness standard, the only dispositive question is whether departure from the conclusion of the sentencing judge could be justified on a standard involving judicial restraint. For the reasons below, it was not open to the Court of Appeal to depart from the conclusion of the sentencing judge that special circumstances within s 227(2) did not exist. The appeal must be allowed.

1 (1936) 55 CLR 499 at 505.

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Edelman J
Gleeson J
Jagot J
Beech-Jones J

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HCZ's offending

4 On 26 December 2022, shortly before midnight and in the company of three others, HCZ decided to commit theft. HCZ had been drinking alcohol heavily for the previous three days. HCZ chose a house in North Lakes, Queensland. HCZ walked to the front door. The family that lived there, the Lovells, had not locked their door that night. Another member of the group entered the Lovells' house, followed by HCZ. HCZ was armed with a knife, the blade of which was approximately 11.5 centimetres long.

5 After HCZ and his companion entered the house, the Lovells' dogs started barking. The persistent barking woke Mr and Mrs Lovell. Mr Lovell opened the bedroom door and was confronted by HCZ in the hallway. The Lovells, yelling, pushed HCZ and his companion out of the front door.

6 Much of what happened was captured on CCTV footage. A physical struggle occurred outside the front door between, on the one hand, HCZ and his companion, and, on the other hand, Mr and Mrs Lovell. During the struggle, HCZ struck out in a full arm-length strike with his knife towards Mr and Mrs Lovell. He missed. HCZ then struck out a second time towards Mr Lovell, who was struggling with HCZ's companion. He missed again. HCZ continued to struggle with Mrs Lovell and, after HCZ's companion ran away to the road, HCZ began to struggle with both Mr and Mrs Lovell on their front lawn. While Mrs Lovell attempted to pry HCZ from Mr Lovell, she pulled a crossbody bag from HCZ which he had been wearing.

7 During the struggle, HCZ stabbed Mrs Lovell in the chest with his knife and stabbed Mr Lovell in the back. Mrs Lovell suffered a 13 centimetre knife wound which penetrated her heart. HCZ's companion returned and attempted to remove HCZ from the struggle. But before HCZ left, he forced Mr Lovell to the ground and kicked him several times in the face. Police and paramedics arrived soon afterwards but they were unable to resuscitate Mrs Lovell. Mrs Lovell was taken to hospital but, despite further attempts to resuscitate her, she died from her injuries. Mr Lovell was also hospitalised but discharged himself to care for his children, who had been present as their mother lay dying on the front lawn.

8 The police found on the front lawn of the Lovells' house the crossbody bag that Mrs Lovell had pulled from HCZ. Inside the bag was a phone which was registered to one of HCZ's three original companions. In the early hours of the next morning, 27 December 2022, police and a dog squad arrived at the house where HCZ was staying. HCZ lied to the police, saying that he had been asleep from 9:00 pm the previous evening. HCZ's shorts had blood splatter on them. HCZ lied

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to the police, saying that he had fallen over earlier, although he could not point to any injuries that could explain the blood. HCZ's t-shirt had a cut to the left of his chest. HCZ was detained by the police and began laughing while he was outside the house.

9 The handle of the knife that HCZ used to kill Mrs Lovell was found in a lounge chair in the house where HCZ was staying. The blade, broken from the knife, was found on the front lawn of the Lovells' house. Mr and Mrs Lovell's DNA was found on HCZ's shoes, under his fingernails, and on the tip of the knife blade. HCZ's and Mrs Lovell's DNA were found on the base of the knife blade. HCZ's fingerprints and DNA were found on the doorway to the Lovells' house, and his fingerprints were found on Mr and Mrs Lovell's bedroom door.

10 HCZ was charged with four offences. First, the offence of burglary by break at night whilst armed and in company.² Second, the murder of Mrs Lovell.³ Third, unlawful wounding with intent to maim, disfigure, or disable, by the stabbing of Mr Lovell.⁴ Fourth, unlawful assault causing bodily harm in company, by kicking Mr Lovell in the face.⁵ HCZ pleaded guilty to all four charges.

Part 7 of the Youth Justice Act

11 Part 7 of the *Youth Justice Act* sets out sentencing rules and principles for a court sentencing a child. The sentencing principles include mandatory considerations of, "subject to [the *Youth Justice Act*], the general principles applying to the sentencing of all persons";⁶ "the youth justice principles";⁷ "the nature and seriousness of the offence";⁸ "the presence of any aggravating or

2 *Criminal Code* (Qld), ss 419(1), 419(2), 419(3)(a), 419(3)(b)(ii), 419(3)(b)(iii).

3 *Criminal Code*, ss 300, 305.

4 *Criminal Code*, ss 317(1)(a), 317(1)(e).

5 *Criminal Code*, ss 339(1), 339(3).

6 *Youth Justice Act*, s 150(1)(a).

7 *Youth Justice Act*, s 150(1)(b).

8 *Youth Justice Act*, s 150(1)(d).

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mitigating factor concerning the child";⁹ and, "if the child is an Aboriginal or Torres Strait Islander person—any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the child".¹⁰ A special consideration to which the court must have regard¹¹ is that a detention order "should be imposed only as a last resort and for the shortest appropriate period".¹²

12 Part 7, Div 4 of the *Youth Justice Act* is entitled "Orders on children found guilty of offences". Section 175 provides for a range of sentencing options when a child is found guilty of an offence before a court. The last resort option in s 175 is an "order that the child be detained" for a period of one year if the court is not constituted by a judge¹³ or, by s 175(1)(g)(ii), if the court is constituted by a judge and s 176 does not apply, the shorter of "half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve" and five years.

13 The exception to s 175(1)(g)(ii) is s 176 of the *Youth Justice Act*, which is concerned with sentences for particular significant offences, including a category of "life offence" which is defined in Sch 4 as "an offence for which a person sentenced as an adult would be liable to life imprisonment". Section 176(3) of the *Youth Justice Act* provides that:

"For a relevant offence that is a life offence, the court may order that the child be detained for—

(a) a period not more than 10 years; or

(b) a period up to and including the maximum of life, if—

(i) the offence involves the commission of violence against a person; and

9 *Youth Justice Act*, s 150(1)(f).

10 *Youth Justice Act*, s 150(1)(ha).

11 *Youth Justice Act*, s 150(1)(c).

12 *Youth Justice Act*, s 150(2)(e).

13 *Youth Justice Act*, s 175(1)(g)(i).

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- (ii) the court considers the offence to be a particularly heinous offence having regard to all the circumstances."

14 Section 227(1) of the *Youth Justice Act* provides that "[u]nless a court makes an order under subsection (2), a child sentenced to serve a period of detention must be released from detention after serving 70% of the period of detention". Subject to exceptions in s 227(3) which are not presently relevant, s 227(2) provides:

"A court may order a child to be released from detention after serving 50% or more, and less than 70%, of a period of detention if it considers that there are special circumstances, for example to ensure parity of sentence with that imposed on a person involved in the same or related offence."

15 The making of an order under s 227(2) requires a court to address two integrated questions. The threshold question is whether it considers that special circumstances exist. If it considers that special circumstances exist, the question becomes what period of detention between 50 per cent and 70 per cent the child should serve before being released. The questions are integrated because special circumstances are any circumstances that provide a special reason to reduce the period of detention from the statutory default of 70 per cent of the child's sentence to a period of not less than 50 per cent.¹⁴ As Mullins and Henry JJ said in *R v KAL*,¹⁵ "[a] single factor such as a plea of guilty reflecting genuine remorse or the youth of the offender may be sufficient to constitute special circumstances for the exercise of the discretion in favour of the offender under s 227(2) of the [*Youth Justice Act*] in one case, but not in another".

The sentencing of HCZ and the Court of Appeal decision

The sentencing judge

16 After setting out the circumstances of HCZ's offences, the sentencing judge (Sullivan J) turned to undertake a comprehensive examination of HCZ's personal circumstances. His Honour described HCZ's deprived upbringing with periods of parental neglect, violence in the context of excessive consumption of alcohol by adults, cannabis use by adults, and the death of the most positive and important person in his life (his grandmother) when HCZ was 14. By the time that HCZ left

14 See *R v Simpson* (2001) 53 NSWLR 704 at 718 [62].

15 [2013] QCA 317 at [37]. See also *R v SET* [2025] QCA 232 at [79].

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Gleeson J
Jagot J
Beech-Jones J

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school in grade eight he had commenced consuming alcohol, inhaling glue, and using illicit drugs and had established an extensive network of persons engaged in antisocial behaviour. The sentencing judge also described how, less than a year before HCZ's offending, HCZ discovered that a step-brother who was close in age and relationship to him had committed suicide. His Honour referred to HCZ's feelings of guilt and pain from the suicide, and HCZ's subsequent increased use of drugs and alcohol.

17 The sentencing judge noted that HCZ is Indigenous and was a child at the time of offending, albeit aged 17 years and eight months. His Honour described HCZ's prospects of rehabilitation and his remorse for the consequences of his offending, although noting that his remorse primarily reflected his sense of self and the shame experienced by his family. His Honour noted that HCZ's plea of guilty to murder was on the basis of felony murder rather than an intention to kill and that HCZ had engaged with substance abuse, cultural, and educational processes. His Honour described HCZ's extensive criminal record but observed that none of HCZ's past offences had involved violence and that HCZ had never been given a detention order. The sentencing judge also acknowledged, and took into account, the utilitarian benefits of HCZ's early pleas of guilty but rightly observed that the pleas were made against the background of an "overwhelmingly strong Crown case".

18 After a careful consideration of all factors, the sentencing judge held that the offence of murder was a "particularly heinous offence having regard to all the circumstances" within s 176(3)(b)(ii) of the *Youth Justice Act*. The maximum penalty for that offence was therefore detention for life. After setting out all mitigating factors, including HCZ's early pleas of guilty, his deprived upbringing and the loss of his grandmother and step-brother, his intoxication at the time of the murder and his expressions of remorse, HCZ was sentenced for each charge as follows:

1. Burglary by break at night whilst armed and in company: 18 months' detention.
2. Murder: 14 years' detention.
3. Unlawful wounding with intent to maim, disfigure, or disable: three years' detention.
4. Unlawful assault causing bodily harm in company: one year's detention.

All sentences were ordered to be served concurrently.

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19 The sentencing judge then turned to consider whether there were special circumstances under s 227(2) of the *Youth Justice Act* to justify release of HCZ from detention after serving less than the otherwise required period of 70 per cent of the period of detention. The sentencing judge said that special circumstances have been found where "factors such as an early plea of guilty, the deprivation of a child's upbringing, with positive signs and the ability to rehabilitate" have been present. However, the sentencing judge said that in the circumstances of HCZ's case:

"Despite the evidence of your childhood deprivation, your early plea of guilty, your expressions of remorse and signs that you have the potential to be rehabilitated, I must weigh that up against the seriousness of the offending."

20 After setting out the circumstances of seriousness, the sentencing judge said that he was not "of the view that the overall circumstances should be regarded as special circumstances warranting the reduction of your serving less than 70 percent of the period of detention".

The Court of Appeal decision

21 HCZ appealed to the Court of Appeal on three grounds. The first ground was that the sentencing judge erred in finding that the offending in relation to the count of murder was "particularly heinous" within s 176(3) of the *Youth Justice Act*. The second ground was that the sentencing judge "failed to give any or any adequate weight to [HCZ's] plea[s] of guilty and personal circumstances". The third ground was that the sentence in all the circumstances was manifestly excessive.

22 The Court of Appeal rejected the first two grounds but allowed the appeal on the third ground. In relation to the third ground, the Court of Appeal rejected HCZ's submission that a sentence of 14 years' detention was manifestly excessive. However, during the oral hearing before the Court of Appeal, apparently as part of this third ground, HCZ also argued that the sentencing judge erred by failing to find that special circumstances existed under s 227(2) and therefore by failing to reduce the period of detention that must be served before release from 70 per cent of the 14 years' detention.

23 A majority of the Court of Appeal (Boddice JA, Freeburn J agreeing) allowed the appeal on this ground. Boddice JA held that, notwithstanding HCZ's mitigating circumstances, his offence of murder required condign punishment. Nevertheless, his Honour said that "the requirement that [HCZ] serve 70 per cent

of what was condign punishment, did render the sentence for murder manifestly excessive".¹⁶ His Honour could not have meant that the statutory default period in s 227(1), which was required to be imposed unless special circumstances were found, was manifestly excessive. Rather, what his Honour must have meant, as he later explained, was that "[t]he failure of the sentencing judge to find there were special circumstances, was an error requiring the sentencing discretion to be re-exercised".¹⁷

24 Boddice JA did not refer to any standard for appellate review of the finding by the sentencing judge that there were no special circumstances. His Honour merely identified the error of the sentencing judge as being to allow "the seriousness of the offending to overwhelm" the factors of "the early plea[s] of guilty, [HCZ's] deprivation in upbringing and the positive signs and ability to rehabilitate".¹⁸ His Honour held that a finding of special circumstances "ought to have been made" and that the period of detention that HCZ must serve before release should be reduced from 70 per cent of the sentence to 60 per cent.¹⁹

25 Bond JA dissented. His Honour would have refused the application for leave to appeal. He held that the standard of appellate review was one involving judicial restraint—"the *House v The King* deferential standard".²⁰ The issue, as Bond JA explained it, was whether the failure of the sentencing judge to find that special circumstances existed was "so unjust or plainly unreasonable that this Court should infer error". His Honour concluded that in this case no such error could be inferred in the application of a legal standard of special circumstances which "tolerates a range of outcomes", particularly if the conclusion were that the period of detention before release of nine years and 10 months (70 per cent of the period of detention) be reduced to eight years and five months (60 per cent of the period of detention).²¹ As will be seen, Bond JA was correct.

16 *R v HCZ* [2025] QCA 147 at [58].

17 *R v HCZ* [2025] QCA 147 at [62].

18 *R v HCZ* [2025] QCA 147 at [60].

19 *R v HCZ* [2025] QCA 147 at [61]-[63].

20 *R v HCZ* [2025] QCA 147 at [7].

21 *R v HCZ* [2025] QCA 147 at [7]-[10].

The appeal to this Court

26 The Crown appeals on two grounds. First, that "[t]he Court of Appeal erred by applying the wrong standard of review to the issue of whether the learned sentencing judge had erroneously reached a state of satisfaction that there were [no] special circumstances within the meaning of s 227(2) of the *Youth Justice Act*". Secondly, that "[t]he Court of Appeal ought to have held that it was open to the sentencing judge to have reached a state of satisfaction that there were no special circumstances within the meaning of s 227(2) of the *Youth Justice Act*".

27 Given HCZ's agreement with the Crown that the standard of appellate review of the sentencing judge's decision about whether special circumstances existed under s 227(2) is not whether the sentencing judge's decision was correct but whether, applying judicial restraint, error was established, the first ground of appeal reduced to a question of interpretation of the reasons of Boddice JA (Freeburn J agreeing) in the Court of Appeal.

28 The ambiguity of the reasons of Boddice JA on this question is unsurprising in circumstances where little or no argument in the Court of Appeal appears to have been directed to the question, and even the issue of whether special circumstances existed was only raised in the Court of Appeal in oral argument. The Court of Appeal had previously,²² and has (by majority) subsequently,²³ correctly held that the standard of appellate review for determining whether special circumstances exist is one involving judicial restraint. Other than to explain why this view is correct, it should therefore be assumed that the majority of the Court of Appeal proceeded on that basis. There is little to be achieved by a minute examination of the reasons of Boddice JA in the Court of Appeal where the only issue in dispute on this appeal concerns the issue raised by the second ground, namely the application of the standard involving judicial restraint by the majority of the Court of Appeal.

22 *R v KAL* [2013] QCA 317 at [32]; *R v SCR* [2017] QCA 60 at [36]; *R v RSG* [2023] QCA 70 at [10]; *R v BZZ; Ex parte Attorney-General (Qld)* [2025] QCA 89 at [84]; *R v MEO* [2025] QCA 103 at [25].

23 *R v SET* [2025] QCA 232 at [73], [80].

The standard of appellate review

29 In *Steven Moore (a pseudonym) v The King*,²⁴ this Court referred to two standards of appellate review, namely: (i) a "correctness" standard (applied "while making due allowance for such 'advantages' as may have been enjoyed by the judge who conducted the trial or hearing"); and (ii) a standard involving "judicial restraint" and affording latitude to a primary judge. This Court said:²⁵

"A determination of which standard of review is applicable does not depend on whether the reasoning to be applied is evaluative or in respect of which reasonable minds may differ. Instead, the determination turns on whether the legal criterion to be applied 'demands a unique outcome, in which case the correctness standard applies, or tolerates a range of outcomes, in which case the *House v The King* standard applies."

30 In the latter instance, where the legal criterion to be applied "tolerates a range of outcomes", or in other words leaves "room for reasonable differences of opinion",²⁶ the standard involving judicial restraint restricts intervention by the appellate court to the five grounds set out in *House v The King*,²⁷ where the primary judge: (i) acted upon a wrong principle; (ii) allowed extraneous or irrelevant matters to affect the decision; (iii) mistook the facts; (iv) failed to take into account some material consideration; or (v) made a decision that was unreasonable or plainly unjust. A contention that a sentence is manifestly excessive is within the fifth ground of error in *House v The King*.

31 Where the legal criterion to be applied is statutory, a determination of whether the standard of appellate review is one of correctness or judicial restraint is always a question of statutory interpretation. Where, as is usually the case, the legislation makes no express provision for the standard of appellate review, the issue is one of implication. In assessing the implied standard of appellate review, all circumstances of the legislation are relevant; no single circumstance will

24 (2024) 282 CLR 460 at 467 [14]. See also *Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541 at 563 [49]; *GLJ v Trustees of the Roman Catholic Church for the Diocese of Lismore* (2023) 280 CLR 442 at 455-456 [16].

25 (2024) 282 CLR 460 at 467-468 [15] (footnote omitted).

26 *Norbis v Norbis* (1986) 161 CLR 513 at 518.

27 (1936) 55 CLR 499 at 505.

necessarily be determinative. Whether the legal criterion is expressed in terms of the "satisfaction" or "consideration" of the decision-maker, such as to indicate that "the decision-maker is allowed some latitude as to the choice of the decision to be made", is an important factor, as is the breadth of evaluative considerations involved in the decision.²⁸ The binary nature of a decision can be an important factor indicating that the correctness standard is applicable, although it is not determinative. Other important factors are the subject matter of the decision and the context in which it is made; for instance, sentencing decisions²⁹ and matters of practice and procedure³⁰ have commonly been treated as decisions to which the standard involving judicial restraint applies. *House v The King* was a sentencing decision.

32 The standard of appellate review implied by s 227(2) in the context of the provisions of the *Youth Justice Act* is the standard involving judicial restraint. The power conferred by s 227(2) arises only in the context of sentencing. Like many sentencing decisions to which the standard involving judicial restraint has historically been applied, the questions to be addressed under s 227(2) are concerned with open-ended evaluative criteria of what the court "considers" special having regard to all the circumstances. The wide range of possible circumstances means that "each individual case" will have a "unique combination of circumstances".³¹ The example of "parity" in s 227(2) does not limit those criteria but instead illustrates that the criteria are not limited even to the circumstances of the child being sentenced.

33 Further, the application of the open-ended evaluative criteria to the wide range of possible circumstances under s 227(2) is integrated with a consideration of a broad range of periods expressed as a percentage of the relevant period of detention imposed. As Crowley J has put the point, it could be said that:³²

28 *Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission* (2000) 203 CLR 194 at 204-205 [19]-[21]; *U v U* (2002) 211 CLR 238 at 262 [90]; *Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541 at 561 [44], 592 [152].

29 *McGarry v The Queen* (2001) 207 CLR 121 at 145-147 [72]-[76].

30 *State Government Insurance Office (Q) v Biemann* (1983) 154 CLR 539 at 549.

31 *R v KAL* [2013] QCA 317 at [32].

32 *R v SET* [2025] QCA 232 at [80].

"a finding of special circumstances is so intimately connected to the [decision as to the percentage of the period to be served], and so dependent upon the court's consideration and weighing of the same factors, that it is properly to be considered as part of the [decision as to the percentage of the period to be served]."

34 It was therefore properly common ground on this appeal that the standard involving judicial restraint should apply to decisions under s 227(2) of the *Youth Justice Act* concerning whether special circumstances exist and, if so, the period of detention that should be served before release (between 50 per cent and 70 per cent).

The error in the reasoning of the Court of Appeal

35 On this appeal, HCZ correctly accepted that in the Court of Appeal the only specific misapplication of sentencing principles that was alleged to have occurred by the sentencing judge was the failure to take into account HCZ's pleas of guilty and personal circumstances. That was the second ground of the appeal in the Court of Appeal. That ground was rejected and was not the subject of any notice of contention in this Court. The only basis, therefore, upon which the Court of Appeal could have departed from the finding by the sentencing judge that there were no special circumstances within s 227(2) of the *Youth Justice Act* was if that finding was unreasonable or plainly unjust within the fifth ground of *House v The King*.³³

36 The only basis upon which Boddice JA could be taken to have concluded that the finding of an absence of special circumstances was unreasonable or plainly unjust was his conclusion that the sentencing judge had allowed the seriousness of the offending to "overwhelm" the mitigating factors of HCZ's early pleas of guilty, his deprived upbringing, and the positive signs of his ability to rehabilitate.³⁴ But, as Boddice JA recognised in relation to the second ground of the appeal (concerning a failure to give adequate weight to HCZ's pleas of guilty and personal circumstances), the assessment of the weight of those mitigating factors and

33 (1936) 55 CLR 499.

34 *R v HCZ* [2025] QCA 147 at [60].

whether they amounted to special circumstances within s 227(2) of the *Youth Justice Act* was generally "a matter for the sentencing judge".³⁵

37 There was nothing about the factors of HCZ's early pleas of guilty, his deprived upbringing, and the positive signs of his ability to rehabilitate that means that it was unreasonable or plainly unjust for the sentencing judge not to reach a conclusion of special circumstances, particularly in light of the seriousness of the offence of murder and the age of HCZ. Indeed, as the sentencing judge observed, the early pleas of guilty by HCZ were made against the background of an "overwhelmingly strong Crown case". And the positive signs of HCZ's ability to rehabilitate were found to show only "prospects of being able to be rehabilitated over time" in circumstances where HCZ was found to have, "at least to a certain extent", a lack of "willingness to confront the consequences of [his] own actions". The decision in respect of special circumstances tolerated a range of outcomes on the facts.

38 It was not open, in the application of a standard of judicial restraint, for an appellate court to interfere with the sentencing judge's decision that no special circumstances existed under s 227(2).

Conclusion

39 The appeal should be allowed. Orders 2 and 3 made by the Court of Appeal on 15 August 2025 should be set aside and in their place it should be ordered that the appeal be dismissed.

35 *R v HCZ* [2025] QCA 147 at [52].