

AUSTRALIA / JUDGMENT

R v Sheard; R v Clarke

[2026] NSWDC 351**COURT**

District Court

DECIDED

25 September 2026

BEFORE

Priestley SC DCJ

CASE / FILE NUMBER

2023/00304836 (Sheard)

2023/00347304 (Clarke)

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Source record

District Court**New South Wales****Amendment notes****Medium Neutral Citation:** R v Sheard; R v Clarke [2026] NSWDC 351**Hearing dates:** 21 September 2026**Date of orders:** 25 September 2026**Decision date:** 25 September 2026**Jurisdiction:** Criminal**Before:** Priestley SC DCJ**Decision:** Sheard

(1) The offender is convicted of counts 2 and 4 on the indictment.

(2) The offender is sentenced to an aggregate term of imprisonment to date from 25 June 2024 with a non parole period of 6 ½ years expiring on 24 December 2030, and with a balance of term of 3 ½ years expiring on 24 June 2034.

(3) The offender will first be eligible to apply for parole on 24 December 2030.

Clarke

(1) The offender is convicted of counts 2 and 4 on the indictment.

(2) The offender is sentenced to an aggregate term of imprisonment to date from 15 September 2024 with a non parole period of 3 ½ years expiring on 14 March 2028, and with a balance of term of 2 ½ years expiring on 14 September 2030.

(3) The offender will first be eligible to apply for parole on 14 March 2028.

Legislation Cited:

Children (Criminal Proceedings) Act 1987

Crimes Act 1900

Crimes (Sentencing Procedure) Act 1999

Mental Health Act 2007

Cases Cited:	Bugmy v The Queen [2013] HCA 37 Chandler v R [2022] NSWCCA 124 DPP (Cth) v De la Rosa (2010) 79 NSWLR 1 Melbom v R [2011] NSWCCA 22 Muldrock (2011) 244 CLR 120 Nikalovski [2018] NSWSC 1156 R v Fisher [2024] NSWCCA 191 R v Hemsley [2024] NSWCCA 228 R v Rae [2013] NSWCCA 9
Category:	Sentence
Parties:	Rex (Crown) Emmet Sheard (Offender) Dakota Rhianne Clarke (Offender)
Representation:	
Counsel:	Mr L. Shaw (for the Crown) Dr Cavanagh (for the offender Sheard) Mr Bickford (for the offender Clarke)
Solicitors:	Director of Public Prosecutions (for the Crown) O'Brien Winter Partners (for the offender Sheard) Amy King Legal (for the offender Clarke)
File Number(s):	2023/00304836 (Sheard) 2023/00347304 (Clarke)

JUDGMENT

Introduction

Emmett Sheard (“Sheard”) and Dakota Clarke (“Clarke”) were jointly charged by indictment of shooting at AB with intent to murder AB and further with wounding CD with intent to murder AB. In the alternative to each of those charges they were charged that they did discharge a firearm with intent to cause grievous bodily harm. The trial commenced in Newcastle on 6 July 2026 and on 22 July 2026 the jury returned verdicts of guilty to the alternate charges. The sentencing hearing for both Sheard and Clarke took place on 21 September 2026 in Lismore. The matter was adjourned to 25 September for judgment, and this is that judgment.

The 2 offences of which both offenders have been found guilty is pursuant to section 33A(1)(a) of the Crimes Act. The maximum penalty for each offence is 25 years imprisonment and there is a standard non-parole period of 9 years. Both the maximum sentence and the standard non-parole period are legislative guideposts indicating the legislature’s view of the seriousness of the offending to assist in arriving at the appropriate sentence. In relation to the standard non-parole period I note that in Muldrock (2011) 244 CLR 120 at [29] the High Court made clear that the standard non parole period has application even when the offending is not considered to be in the middle of the range of seriousness as that term is used in section 54A of the Crimes

(Sentencing Procedure) Act ("CSPA"). The standard non-parole period is an indication of the legislative view of the seriousness of the offence.

There are no matters to be considered by way of the Form 1 procedure nor are there any related offences. Neither offender was on conditional liberty at the time of the offence.

The date of the offences was 21 September 2023. Sheard was arrested on 25 September 2023. Sheard has been in custody since that date, so as at the time of this sentence hearing, 3 years precisely. He was however in that period sentenced to a term of imprisonment in respect of an assault occasioning actual bodily harm which occurred in custody on 19 August 2025, for a period of 16 months to date from 19 August 2025 and with a non-parole period of 12 months. There is therefore a question as to what extent, if any, the backdating of the sentence should allow for that 12 month non-parole period.

Clarke was arrested on 1 November 2023 and has now been in custody as at the date of these reasons being delivered for 741 days. Since 1 November 2023 there have been some periods when she was not in custody. The time in custody was not wholly attributable to the present offences. Since 1 November 2023 she has spent 90 days in custody pursuant to a sentence for common assault and a total of 48 days in respect of being refused bail on matters which are not yet resolved. The common assault was committed on 28 December 2023, the sentence was imposed on 23 July 2024, and the date of commencement of the sentence was 10 December 2024. The sentence will be backdated by at least the number of days attributable to the present offences which is 603 days at the time of delivering judgment and a decision needs to be made as to how much of the remaining 138 days if any should form part of the back date period.

It was Sheard who actually discharged the firearm in respect of both charges. He is therefore directly criminally liable for his conduct. The basis of the criminal liability of Clarke is extended joint criminal enterprise.

The facts

Contained in the Crown bundle in respect of the Sheard matter and so exhibit A was a statement of facts. That statement of facts was agreed to by both Sheard and Clarke. I have considered those agreed facts and find that they accurately reflect the findings of fact that the jury necessarily must have found in order to reach the verdicts of guilty in respect of the alternate charges in respect of both offenders. The following summary is not intended to replace those agreed facts which are in evidence but rather to provide an understanding of the factual basis for the sentences that follow.

The offences involved a targeted entry into premises which were the home of AB and CD and from which AB conducted a business of supplying prohibited drugs including methamphetamine. Sheard had been there about one week prior to the offending and at that time purchased 3.5 g of methyl amphetamine from AB.

Both offenders were involved in preparation for the robbery. Plainly Sheard was aware of the presence of a firearm given that he fired the shot from the rifle he was carrying and it is agreed that Clarke was also aware of the presence of firearms. Text messages involving her support this.

Telecommunication data that was in evidence showed that Sheard and Clarke were in the same general area before the robbery and possibly together and I find they were together. The two devices locating them then ceased network activity suggesting and I find that they had been turned off. That was about 1:09 AM. Prior to that at about 12:30 AM Sheard had used the Signal application to contact AB and arrange to purchase half an ounce of methyl amphetamine for \$1800. Thus he knew that AB would be up at his house waiting for him. This AB did.

Mr Sheard concealed a loaded .22 calibre lever action rifle inside his tracksuit pants. At about 2:20 AM Sheard and Clarke arrived at the front door of AB's premises ("the premises"). AB who was expecting Mr Sheard opened the front security door and let both offenders in. Clarke remained near the door. Sheard moved towards the dining table area and withdrew the rifle from his pants. Sheard presented the weapon to AB and said "I don't know if you wanted to buy one of these" and then raised the barrel, pointed it at AB's face and demanded "give me your fucking drugs and your money".

AB grabbed the tip of the rifle barrel and pushed it away saying "are you fucking serious". A struggle ensued during which the firearm discharged. The projectile missed AB and struck the back wall of the lounge room. AB saw Sheard attempting to chamber another round and AB moved through the lounge room into the adjoining hallway and pulled the internal door closed.

AB crouched in the hallway holding the internal door shut. Sheard fired the rifle through the closed hallway door striking AB in the left arm. CD had woken due to the noise and had approached the hallway area. When Sheard fired again CD was struck in the left thigh.

The victims then retreated to the front bedroom and again AB sought to hold the door shut. Sheard pushed the barrel of the rifle through a hole in the bedroom door and discharged the weapon into the front bedroom. The bedroom door gave way. Clarke had moved down the hallway with Sheard. This is significant; although not firing the weapon she had not withdrawn from what was occurring. Indeed she participated in physically restricting AB in that he was in effect behind the bedroom door and became wedged between it and a tallboy draw set. The agreed fact is of Clarke standing on the other side of the door and holding it shut against him; in submissions it seemed to be accepted that just what she was doing is unclear but that it is agreed that her presence in that location on the other side of the door restricted AB.

CD gave evidence and it is accepted that at this point Sheard grabbed Clarke and pulled her in front of him whilst pointing the rifle directly at CD. CD's evidence was of Clarke going pale and shaking and holding her hands up giving the impression that she was in some kind of hostage state to AB as opposed to his accomplice, which is my description not that of the agreed facts. Consistent with this view AB stated in evidence he felt no threat from Clarke as his focus was on Sheard. AB then rushed Sheard and the rifle discharged a fifth time. Throughout these events Clarke remained with Sheard, though that needs to be viewed in the context of her appearance

when being held by Sheard.

AB suffered a penetrating gunshot wound to his left upper arm. He was treated at hospital where a 12 cm x 6 cm laceration to his triceps was observed extending deep into the muscle. He required surgery including a wound washout, debridement of dead tissue and reconstruction of the triceps using sutures. He later required a split skin graft with tissue harvested from his left thigh to reconstruct the arm wound. A bullet fragment was removed from his arm. The evidence of Dr Lee which I accept was of the injury being serious and potentially life-threatening.

CD sustained a gunshot wound to her left upper thigh and a 12 mm metallic foreign body was identified lodged in her thigh along with multiple shrapnel fragments. Dr Lee observed a 7 mm entry wound with associated soft tissue haematoma. CD underwent surgery involving a wound washout, repair of the quadriceps muscle and application of a vacuum dressing before the wound was closed several days later. Some bullet fragments could not be safely retrieved and remained embedded in her thigh. CD remains with a 20 cm scar and a complete loss of sensation at the top of her leg. The injury was not regarded as life-threatening but as a serious injury. The agreed facts note an untreated gunshot wound would have the potential to lead to life-threatening sepsis.

At 2:21 AM, so immediately after the offending, CD contacted emergency services to report the shooting and the police arrived within 10 minutes of that call. AB gave an account to police and identified the male shooter as Emmett, namely Sheard.

On 25 September 2023 police attended an address at Wallsend where Clarke was present. On that date at that location Sheard was arrested. Clarke was arrested on 1 November 2023 after the development of further evidence including DNA evidence from nearby the premises.

There was other evidence suggesting both Sheard and Clarke having a connection to firearms and more so concerning Sheard but it was not suggested that those firearms were the firearm used in the shooting. Clarke declined to be interviewed. When Sheard was asked to give his mobile telephone he said he did not have one. Later, on 5 October there was a recorded gaol call between Sheard and Clarke with reference to the “Al Capone” of Sheard. The evidence clearly showed Sheard had a phone.

There are other matters as to post offence conduct which go more to demonstrating guilt rather than impacting on the severity of the severity save that Clarke sought to establish a false alibi. The conversation seeking to establish that alibi occurred prior to her arrest. Both offenders maintain their innocence and it is accepted that neither of them have shown any remorse.

Objective seriousness

Sheard was the instigator and principal offender. He fired the rifle. There were 5 shots fired. It was the second and third shots that struck the victim's AB and CD respectively. The fourth shot through the bedroom door was a deliberate firing of the weapon. The first and fifth shots as described by the agreed facts occur at a time when AB struggles with Sheard with the weapon and there must be some issue as to whether those two shots occurred due to the struggle or a

deliberate pulling of the trigger. The offending was planned and Sheard and Clarke executed a ruse in order to gain entry to the property. Once in the home they both pursued firstly AB from the lounge to the hallway and secondly both victims from the hallway down to the front bedroom. It is argued on behalf of Sheard that the offending is made less serious because the shots that caused the injuries were fired without knowing precisely where AB was and further whether or not CD was there at all and if so just whereabouts. This argument is of minimal assistance to the offenders. It perhaps demonstrates that worse examples of this type of offending can be imagined but the fact that the second and third shots were fired through a door knowing it was being held shut by somebody on the other side and thus knowing there would be a real prospect of striking that person is beyond reckless. The conduct of Sheard overall shows a clear intent on his part to shoot a person given that he pointed the rifle directly at AB in the lounge room, shot through the door as just described twice, fired through a hole in the door and then pointed the rifle directly at the face of CD. In line with the verdicts, the established intent in shooting was not to murder, but to cause grievous bodily harm.

The charge is one of intent to cause grievous bodily harm and so it need not be determined just whether the injuries reach the level of being “really serious bodily harm” to make out the offence. The nature of the injuries remains relevant in determining sentence, and injuries were undoubtedly serious. Each victim required surgery and in the case of CD shrapnel remains in her body. Beyond that I accept as was submitted on behalf of Clarke that there is no evidence of other continuing sequelae.

I would assess the objective seriousness of the conduct of Sheard to be into the mid-range. I note the views expressed elsewhere about the imprecision of such a measure in cases such as *R v Fisher* [2024] NSWCCA 191, and in an effort to be more precise would express the assessment as being towards the top of the middle 20%. It is to be remembered that Sheard was directly criminally liable and it was he that fired the weapon with the necessary intent.

The position is different with Clarke. In the written submissions of Mr Bickford for Clarke the fact of her criminal liability being by way of extended joint criminal enterprise is emphasised and distinguished not just from direct liability but also from straightforward joint criminal enterprise. This means that she need not have intended to cause grievous bodily harm but rather in agreeing to the “drug rip”, she foresaw but did not agree to the commission of the incidental crime of which she has been found guilty.

Next, whilst both parties have been found guilty of the same offence, in order to assess the objective seriousness of their respective offending it is necessary to consider what they actually did. Clarke attended at the premises knowing Sheard had the rifle, she did not back off from partaking in the offending, following Sheard through the hallway door and then pursuing the victims down the hallway into the front bedroom. The evidence does not disclose that she said anything in the course of this. She held no weapon, fired no rifle and her conduct apart from accompanying Sheard is limited to forming an obstruction to AB so that he was kept behind the bedroom door. The physical role is not great and she posed no threat to AB at least so far as AB was concerned. Further she seems to have been emotionally impacted by what she was

witnessing given that she was described as going pale and was seemingly used by Sheard as a shield. As Mr Bickford points out the nature of her criminal liability is such that it can be said that while she foresaw what occurred may occur she did not make an agreement for it to occur.

The result is that in terms of objective seriousness the offence by Ms Clarke is significantly less serious than that of Sheard. It does of course remain serious but in my view it is below the mid-range, and towards the bottom of the middle 40%.

The offence was carried out in the home of the victims which is an aggravating matter. That consideration does not have as much impact as ordinarily would be the case given that AB conducts an illegal business from their home which brings with it the risk of this very type of illegal conduct.

Purposes of sentencing

Prior to setting out the subjective case of each of the offenders I note that the purposes of sentencing set out in section 3A CSPA are as follows:

To ensure the offender is adequately punished

To prevent crime by deterring the offender and others from committing similar offences

To protect the community from the offender

To promote the rehabilitation of the offender

To make the offender accountable for his actions

To denounce the conduct of the offender

To recognise the harm done to the victim of the crime and the community

I note the provisions of section 5. There is no argument in this case that any other sentence other than full-time custody is appropriate for either offender.

Subjective case of Sheard

Sheard relied on a report of Dr Bench, psychiatrist, dated 18 August 2026, and an earlier report of Dr Bench dated 11 February 2021. The background history set out in the second report of Dr Bench dated is not challenged and sets out a background of growing up with significant domestic violence between Sheard's mother and stepfather. Sheard has one brother and one half brother and a half sister. His parents separated when he was 5 and he has a good relationship with his mother. His father recently died and he does not have a relationship with his stepfather. There was no involvement of the Department of Community Services and his stepfather was never charged with domestic violence offences. When growing up he enjoyed football and riding motorbikes. He was sexually assaulted in his late teens on 5 to 6 occasions in a juvenile justice centre. He attended numerous schools and never attained his school certificate. Sheard was suspended from school at times for truancy and physical altercations.

There is no doubt, and I find, that Sheard has had a troubled childhood. His criminal record shows involvement with the children's Court commencing for an offence committed on 13 September 2009 so that he would have then been 17 years and 11 months old. He was sentenced by way of a 5 month control order on 23 December 2009, so when he was 18 and 2 months old. The sexual abuse is said to have occurred in his late teens. Another control order of one month (following a call up) commenced 6 May 2011 by which time he was 20, and his custody records shows him at this time to be in adult custody. Based on that record his behaviour only resulted in engagement with the Juvenile Justice System when he was 17 years and 11 months old.

Sheard told Dr Bench that the longest period in a juvenile justice centre was seven months and that he had been detained a few times and started getting into more trouble after that.

There are some inconsistencies between the history Sheard gives and the records, yet I accept what Sheard says is his honest recall, and it was challenged. I find he was in Juvenile detention for at least 5 months, and in that period he was sexually assaulted, and after that abuse he started getting "into more trouble".

Sheard is now 34 and has spent a significant part of his adult life in custody. His custody record shows that he entered adult custody for the first time on 30 July 2010 when he would have been 18. His offending ranges from minor matters of shoplifting and possessing a prohibited drug to aggravated break and enter and committing a serious indictable offence of inflicting actual bodily harm. At the age of 18 he was sentenced to 5 years imprisonment with a non-parole period of 2 ½ years but to be released subject to supervision. In 2015, at the age of 23 he was sentenced to 26 months in prison with a 17 month non-parole period for break enter and steal. There are other offences of aggravated break and enter and dishonesty, reckless wounding and assault occasioning as well as matters involving drugs and obtaining a financial advantage by deception.

A number of points emerge from this. The Crown accepts that his background involves significant deprivation and trauma. I accept that submission based on the environment of domestic violence and the trauma of the repeated sexual assaults. Unlike many cases where those principles apply however it does seem that there was some light amongst the darkness with Sheard engaging in healthy pursuits whilst at school such as his football and motorbike riding, the fact that he did not have to repeat any grades or special education and that he left school and engaged in the workforce in numerous positions. That is not to suggest that school was easy for him but just to put the overall matter in context.

From a young age Sheard has been using cannabis which commenced at 14 and has been daily since 15. He commenced using amphetamines at age 17 and query whether that was prior to or after the sexual abuse. From the age of 20 he used amphetamines on a daily basis except when in custody and was smoking 1 to 2 g daily at the time of his arrest. He last used methamphetamine whilst in custody only one month before his assessment by Dr Bench this year.

A significant event is that on his own account when in custody prior to this occasion he had killed a man though was found not guilty of charges arising from that. It is another event of trauma.

The opinion of Dr Bench is that with a reasonable degree of medical certainty Sheard meets the diagnostic criteria for cluster B personality disorder with antisocial and borderline traits, cannabis use disorder, stimulant use disorder, opioid use disorder and post-traumatic stress disorder.

In the written submissions for Sheard reference is made to both *R v Hemsley* and *DPP v De la Rosa*. Despite the reference in *De la Rosa* in the first of the bullet point passages at paragraph 177 to the mental health of a person contributing to the commission of offence being able to reduce moral culpability, I accept that such a causal connection is not necessary for the moral culpability to be reduced. That there are mental health issues afflicting the offender as diagnosed by Dr Bench is not challenged and I accept it to be so.

The result is that there are both Bugmy factors and a mental health state which lessen the moral culpability of Sheard. As a consequence there should not be as much emphasis placed on general deterrence as would otherwise be the case. The difficulty for Mr Sheard is that for the majority of his adult life he has been on a conveyor belt of offending and custody followed by further offending and custody creating the impression of a person who really has no concept of the appropriate way to conduct himself, or ability to do so. There should be an emphasis, within the bounds of sentencing principle, on trying to address the criminogenic issues, that is, to focus on rehabilitation.

Countervailing those considerations however is the fact as recognised in *Bugmy*, *De la Rosa* and *Hemsley*, that as a result of these characteristics of the offender and his background, drug use and mental health the level of danger which the offender presents to the community may call for a more severe sentence. As put in *De la Rosa* in those circumstances considerations of specific deterrence may result in an increased sentence, or put another way there is a greater need for protection of the public.

The other aspect of *De la Rosa* is whether due to Sheard's mental health, his time in custody may be more onerous. Dr Bench's report points in opposite directions for he says that the offender has in some regards improved since being in custody, but at the same time says that a prolonged period in custody would be onerous for him. On page 9 of the report it is stated that Sheard had shown some paradoxical improvement since being incarcerated but in the following paragraph went on to say a lengthy custodial sentence would see a foreseeable risk of exacerbating his PTSD.

When asked about the offending Sheard maintained his innocence and said "honestly I don't even know what happened a bloke in his missus said I went to their house and shot them..... it wasn't even me....in the trial I thought it was pretty clear-cut. I have no idea how the jury found me guilty I just don't understand".

The letters from Sheard's sister and mother are supportive of the background set out in the psychiatric reports. His sister Shandel left home at the age of 14 due to the fighting between her mother and her boyfriends. She spoke of holes in the wall from punching by the father. The domestic violence between her mother and later partners saw the children sent to live with the father or when she had her own accommodation at age 16, with her

In slight contrast to that the mother says that Sheard lived with her from age 5. She said he would not stay with his father permanently. What is consistent is the degree of abuse in the household. She states that she thinks Sheard was about 15 when he was first arrested.

In short I accept the submissions made on behalf of Sheard as set out in paragraph on page 12 of the written submissions of Dr Cavanagh. For the reasons outlined above Sheard's moral culpability is reduced and he is a less suitable vehicle for general deterrence. On balance I consider that due to the increased risk he poses to the community there is the countervailing outcome that there is a need for greater specific deterrence and for protection of the community. I also accept that custody will be more onerous for Sheard as stated by Dr Bench, despite the paradoxical improvement noted on his return to custody.

It is also relevant to consider that there is a risk of institutionalisation which may already have begun and may indeed explain what the doctor referred to as the paradoxical improvement since incarceration. The concerns as to institutionalisation, more onerous nature of custody, and the need for an extended period of supervision to aid treatment of the kind outlined by Dr Bench, support the finding I make of special circumstances. It is further supported by the fact that after so much custody in his still relatively young life, he will need assistance to adjust to life in the community.

I also take into account that it is now three years since he has been arrested for this matter. Sheard would have experienced an element of suspense and angst awaiting the outcome.

Submissions were also made as to parity though in my view the roles played by Sheard and Clarke are so different in my assessment of their objective criminality that it is not a matter of great moment. The sentences will plainly be different.

I have set out above the purposes of sentencing as set out in section 3A. My discussion of them has focused on issues of deterrence and protection of the community, but there is plainly a role for denunciation and accountability, but with Sheard's subjective situation being taken into account. That this is the impact upon the victims is also recognised. Whilst there was not in evidence any victim impact statement, the experience would have been extremely frightening, and there is the injuries the victims suffered.

The purpose of rehabilitation in my view is best achieved here by a lengthy parole period, consistent with my finding of special circumstances.

The Crown provided summaries of numerous cases of similar conduct but which can all be distinguished from the present facts. I have considered those submissions and have benefited from them but they really do demonstrate the uniqueness of each case and the need to determine

each case on its own facts. That said I note that two cases were mentioned which involve facts of home invasions targeting drugs. One was the case of Nikalovski [2018] NSWSC 1156. That was a charge under section 97(2), so armed robbery with a dangerous weapon where there were co-offenders and the agreement was to execute a robbery of cannabis using an unloaded gun to intimidate the occupants of the home. The person with the gun shot one of the occupants dead and was tried separately for murder. Nikolovski was sentenced on the basis that it was an unloaded gun and received a 6 year term with a 3 year 9 months non-parole period. The case is significantly factually different to the present. In *R v Rae* [2013] NSWCCA 9, a charge under section 33A, in the course of a robbery the offender threatened a person with a pistol and shot them in the leg and entered an early guilty plea. The sentence imposed at first instance was an aggregate sentence of 5 years and 7 months with a non-parole period of 4 years. The Crown successfully appealed and on resentence a sentence of 7 years and 7 months with a non-parole period of 5 years and 5 months was imposed. That was an aggregate sentence for 4 offenses, and the indicative sentences on re sentence were not stated, though there was a 25% discount which is not the present case.

Without going into further detail, other cases cited by the Crown arrived at sentences ranging from 15 years (after a 25% discount; *Melbom v R* [2011] NSWCCA 22, s33A), to 6 years 7 months where the offender fired the weapon (s33A), with the co offender not firing the weapon received 2 years and 9 months, but charged with the lesser offence under s93G with a maximum term of 10 years (*Chandler v R* [2022] NSWCCA 124).

It is also necessary to bear in mind that there are two charges and two victims. There should plainly be a significant degree of concurrency in the sentences but not to the degree of being wholly concurrent. The principle of totality needs to be applied and this case is a good example of how a lineal approach gives a disproportionate result.

It can perhaps be said that the offence involving AB is more serious because he was so plainly the target as is recognised by the framing of the second charge concerning the victim CD which is in the alternative to count 3 which was pleaded as wounding CD with intent to murder AB and the alternative charge being the s33A charge of discharging a firearm with intent to cause grievous bodily harm which must necessarily be in respect of AB.

Bearing all the above considerations in mind I arrive at the following indicative sentences, and given the standard non parole provisions, the indicative non parole period for each of count 2 count 4:

Count 2: 8 years with an indicative non parole period of 5 years;

Count 4: 6 years with an indicative non parole period of 4 years.

As noted, the facts dictate a significant degree of concurrency, yet the fact of CD also being wounded by gunshot must be recognised. The aggregate term will be 10 years. I have made a finding of special circumstances. The statutory ratio would see a period of supervision of 2 ½ years, and it is arguable that the allowance for special circumstances need not be significant to

achieve the purposes identified for special circumstances. That may be so if consideration is limited to rehabilitation, but there is also the concerns as to Sheard's mental health, the onerous nature of custody for him, and the concern as to institutionalisation . For those reasons the non-parole period is 6 ½ years.

The indicative non parole periods are less than the standard non-parole period because of the finding of lesser moral culpability and for the reasons given for the finding of special circumstances.

It remains to consider the start date in light of the 12 month non parole period served for the offence committed in custody. That is clearly an offence distinct from the current offending. One approach is to consider whether had the offenses been sentenced together, would a result of no concurrency result in a disproportionate sentence. In my view the answer to that is only marginally so. I will allow 3 months as the period of concurrency, so that rather than backdating the matter to the date one year after Sheard went into custody, I will backdate it to the date 9 months after Sheard went into custody, which is 25 June 2024.

The formal orders are set out at the end of this judgment.

Subjective case of Clarke

Clarke relied upon two reports of Dr Richard Furst psychiatrist dated 3 October 2021 and 9 September 2026. Also tendered on her behalf was a letter from an organisation referred to as WEAVE dated 3 May 2023, letters from a Department of Community and Justice case worker Cathy Flew dated 12 September 2025 and 19 September 2026, and medical material from Dokto medical specialist telehealth of November 2025, Justice health records and a record of her bail conditions.

The following background is taken from the second report of Dr Furst, which I accept. Clarke was born on 19 March 1998 so that at the date of this sentence she is aged 28 years old. She is an indigenous woman and a single mother of two children and pregnant with her third child with a due date of early 2027. The two children are in the care of their paternal grandparents. She has an older brother and a younger sister. Her parents were both heroin addicts. That together with abuse and neglect resulted in her and her brother being removed from her parents' care when she was four or five years old. The following years were spent with her brother in foster care but also some time with her parents. Her younger sister was removed from the family shortly after birth and Ms Clarke has had no contact apart from one occasion with her sister. Ms Clarke was a ward of the state until aged 18. She had significant emotional and behavioural problems from early childhood and did not learn to read or write until year five. At times she attended behavioural schools. She was in juvenile detention at age 17. Clarke did not complete year 10. Both her children came from a relationship which began at age 16 and she was 17 when she became a mother. The father Terry Egan was deported to New Zealand in 2023 after being arrested and incarcerated in respect of his role in bank robberies. Clarke's next partner also became incarcerated. Clarke struggled with depression

A physical ailment or at least a physical emanation of some condition of Ms Clarke is that she experiences seizures which began in about October 2020. By this stage a further relationship involved a man again who was incarcerated and then on his release was unfaithful to her. That relationship had elements of physical conflict.

The psychiatrist says it was in the context of these multiple emotional and relationship stressors and in the context of her depression that the seizures began. In 2020 and 2021 they are described as occurring “up to daily”. Her current partner and partner for the last five years is now currently incarcerated with a release date of 2037. Based on the psychiatrist report that sentence relates to a planned robbery in which a man was shot and died.

Ms Clarke’s older brother was convicted of a shooting offence and sentenced to 8 years with six years non-parole. There is a heavy element in the life of Clarke relating to criminally inclined partners and family members.

In all the circumstances of this offending and Clarke’s background a substance abuse history might be expected. The evidence however is that Clarke does not drink much alcohol and on her own account hardly uses illicit drugs, having used ice on only two occasions nor does she use cannabis. She has used GHB on a few occasions. The psychiatrist describes this as surprising and allows for the possibility that there has been a history of drug use which Clarke denies.

There has been a diagnosis of epilepsy by Dr Bleasel who saw Clarke in 2023 and again in 2026. Despite medication it was not controlled and in January 2026 she was placed in an induced coma as she had gone into a state of continuous seizure. The psychiatrist notes the criminal history which I will refer to below.

Clarke’s father died in 2023 which she found difficult to cope with.

Whilst her children were living with their paternal grandparents, Clarke has seen them on a regular basis in the 12 months leading up to her incarceration. The care of the children is also carried out by a foster mother and the foster mother and the grandparents are supportive of Clarke. The relationship was building at the time that she went into custody and she finds it difficult now being away from them.

The report refers to Clarke suffering nightmares of the trauma of a home invasion she suffered where she was gang raped and seriously injured. No history is given of that event either in the 2026 report or the 2021 report but rather the fact of it is simply stated. There is no challenge to that having occurred and it would have been a highly traumatic event in addition to the other matters of disadvantage in her life.

The psychiatrist notes that the letters from Ms Flew show the increasing bonding between Clarke and her children. The psychiatrist notes the medical telehealth reports are consistent with the history of seizures and epilepsy.

The psychiatrist refers to a psychological report from 21 July 2020 not in evidence but from which it was noted that Clarke's practical emotional and social needs were insufficiently met during childhood, her attachment experiences were disrupted and her temporary placements destabilising. Her environment and role models were highly antisocial.

The psychologist referred to volatile interpersonal relationships and numerous sources of trauma and evidence of a complex range of mental health issues. She was said to meet the criteria for PTSD and ADHD

The psychiatrist states Clarke meets the criteria for the diagnosis of PTSD, conversion disorder, ADHD, conduct disorder and personality disorder borderline and antisocial traits. A characteristic of ADHD is its impulsivity, of making decisions in the moment without thinking of the consequences. It is said she has conversion disorder which manifests itself in pseudoseizures and psychologically induced weakness along with epilepsy which underlies this psychological disorder.

The psychiatrist was asked whether and to what extent any of the conditions of Clarke directly or indirectly causally related to the offending. The opinion given is that the offending was financially motivated. The psychiatrist goes on to say that the relevance of her background mental health and the pro-criminal values of her family associates and boyfriends "is that criminal activity/offending was normalised and encouraged throughout her formative years setting the foundation for her offending on 21 September 2023". The psychiatrist offers, perhaps beyond his brief, that the principles of mitigation elucidated by the High Court in *Bugmy* would apply to Clarke.

Dr Furst assessed Clarke as a moderate to high risk of reoffending having referred to her pattern of recidivism, her mental health problems and her pro-criminal associations.

The stress of being incarcerated was said to probably make the risk of her relapsing into more acute phases of anxiety and depression high. He then sets out various treatments that should be made available to her including psychotherapy, medication and lifestyle modifications. In the custodial setting it is recommended that treatment occur with a clinical psychologist to treat the PTSD, that there be regular appointments with a psychiatrist and continued medication. Despite Ms Clarke's denial of problematic drug use an EQUIPS addiction program is recommended.

The medical health records are consistent with the health conditions recounted above. Most recently on 10 August 2026 the Justice Health records note a substance use history of only social drinking, denial of cannabis, a couple of cigarettes per day and stimulants used only for a short period in her teens, no MDMA/cocaine use and denial of using other drugs. It notes that she has tested positive to a pregnancy test and it notes that she suffers epilepsy anxiety and depression and PTSD.

I accept the background and health history of Clarke to be as just recounted.

The criminal history of Clarke is interesting. At the outset it should be noted that this is by far the most serious offence that she has committed. It is a significant escalation in her criminal activity. Her record is lengthy.

The record shows offences as a child all recorded without conviction. Within two years of the last children's matter there was a conviction for shoplifting so that by section 15 of the Children (Criminal Proceedings) Act the children's record is admissible. The last children's matter was 14 January 2015 and the next offence was as an adult on 16 November 2016 of shoplifting and the next offence after that was in February 2017. In other words but for the minor matter in November 2016 for which she was fined \$300 her criminal record as a child would not be admissible. The record however, whilst not favourable, is really more telling as being consistent with her subjective case of disadvantage.

Her adult criminal history is largely of minor property matters. In 2019 she was discharged under section 32 of the Mental Health Act for a charge of destroying property. The continued property matters saw an ICO imposed on 30 June 2021 for 9 months. In 2021 there was a harassment offence and a resisting police charge dealt with by the same ICO which was imposed in respect of an aggregate sentence.

In 2021 Clarke was sentenced to a term of imprisonment in respect of possessing a prohibited weapon and possessing a prohibited drug. The term was three months suggesting a fairly minor matter, but still an escalation in her offending. In 2022 she was sentenced to an aggregate term of 12 months with six months non-parole in relation to various dishonesty offences and two counts of assaulting a law enforcement officer. That was the state of the record at the time of committing the present offenses. It was submitted her record does not deny her all leniency; in my view the record is extensive enough to deny her leniency on that basis. It is however difficult to put out of one's mind the fact that in the course of this very serious offence she was used as a shield by her co-offender, looked pale and is not considered by AB to be threatening. It really has the flavour of somebody who had agreed to do what the jury found she had agreed to do with the foresight that there may be the occurrence of the incidental criminal act but who when those events transpired realised the grave mistake that she had made.

Of course since committing this offence she has spent time in custody for a further assault matter and awaits to be dealt with in respect of two more matters, the position of which is not clear.

The Crown did not take issue with the range of submissions made on Clarke's behalf. In short the Crown accepted that her conduct was less serious than that of Sheard. There is no challenge to the evidence and submissions for Clarke concerning her background of profound disadvantage, and mental and physical health.

Clarke relies upon her profound background of disadvantage, the trauma she has experienced and her mental health to argue that her moral culpability is lessened and so that there is therefore less need for emphasis on general deterrence. That submission was not challenged and I accept it. The evidence makes plain that she has had a profoundly disadvantaged childhood and as a young adult suffered extreme trauma when sexually assaulted. The psychiatric evidence is accepted and establishes her state of mental health as being poor.

I accept the submission based on the psychiatric opinion that for Clarke criminal activity has been normalised and encouraged throughout her formative years which is reflected in both her Children's Court record and the ongoing relatively minor criminal activity as an adult. I accept as has been submitted the opinion of Dr Furst that Clarke's mental conditions together with a background of trauma disadvantage and neglect has set the foundation for the current offending. That said it is not submitted the mental conditions are directly causative of the offending but rather there is argued to be an indirect interrelationship between them, the background of disadvantage and the offending.

It is well-established that no direct causative link need be established for there to be an impact on the moral culpability of somebody who suffers mental health illness. I accept that the moral culpability of the offender Clarke is reduced by reason of her mental health as well as due to her background and that lessens the emphasis to be given to general deterrence.

There is also the issue of Clarke's physical health. I accept she suffers from the seizures as described by the psychiatrist and also note that she is presently 17 weeks pregnant. The seizures in my view will make custody more onerous and allow for a finding which I make of special circumstances. To a lesser extent due to it existing for a closed time period the pregnancy will be more difficult whilst in custody. However beyond the remaining term of pregnancy that matter has little impact.

In terms of the prospects of rehabilitation and the risk of reoffending the submission is made that this is not recidivist violent offending but rather conduct consistent with impulsive poor choices consistent with the nature of her mental health. She is also still relatively youthful and I take that into account.

At the same time she expresses no remorse and she has been assessed by Dr Furst as a medium to high risk of reoffending. Her whole environment is a pro criminal antisocial one as demonstrated by her choice of partner and her own conduct.

Her prospects of rehabilitation are poor absent any treatment. Should she undergo the treatment being recommended by Dr Furst then a more optimistic view albeit guarded could be adopted.

I find that this serious criminal offence is something of an aberration rather than an escalation likely to continue, particularly given the facts I have found as to her involvement in the offending. Thus perhaps the best that can be said for Clarke is that whilst her prospects of rehabilitation and reoffending are poor the likelihood is that she will continue on with impulsive low-level crime which whilst not to be encouraged is far preferable to being engaged in offending of the type now being considered.

I note that Clarke relies on her bail conditions. I do take them into account in a general way; she has been in the community for approximately one year since the offending, and the bail conditions in evidence include daily reporting, and a curfew condition so that she could not be out of her residence between 8pm and 8am unless in the company of a named person.

In terms of special circumstances not only is there her physical condition and mental health but I also consider that she requires an extended period under supervision to assist with her engagement in the community-based treatments being recommended by Dr Furst. It would also be by some measure her most lengthy period in custody.

There was reference to the range of cases that the parties had helpfully summarised however I note my earlier comments in that regard.

In summary, Clarke has a profoundly disadvantaged background, but also not a promising future, based on the evidence. I do note however, the letter of WEAVE which is dated only some 5 months before this offending. That letter shows real engagement by Clarke in services seeking to assist her to move away from an anti social lifestyle, albeit over a fairly short period. It was in that same period that she took positive steps to be more involved in the lives of her children. Clarke is also still relatively youthful, and should not be considered to have no prospects.

In terms of parity, as already noted this is not a case where there is much work for parity to do, give the far different roles played by the offenders. Clarke's offending is less serious, and her criminal record more favourable. As with Sheard, her moral culpability is reduced, so when looking at the purposes of sentencing, there should be less emphasis on general deterrence. Further, the countervailing concern of protecting the community is not on the same scale as it is with Sheard. There is the need for accountability and denunciation, and there is a role for specific deterrence. For the same reasons stated in respect of the sentence of Sheard, count 2 is the more serious offence.

Taking all these matters into account, the indicative sentences for counts 2 and 4 and the indicative non parole periods are as follows:

Count 2: 5 years with an indicative non parole period of 2 ½ years;

Count 4: 3 ½ years with an indicative non parole period of 2 years.

I take the same approach as to concurrency and totality as with the sentence of Sheard (see at [55] above). Also as in the same way as the matter of Sheard, the indicative non parole periods are less than the standard non-parole period because of the finding of lesser moral culpability and for the reasons given for the finding of special circumstances.

The aggregate term will be 6 years, with a non parole period of 3½ years. As to the start date the time of remand for matters not yet finalised (48 days) will not reduce the backdate, and those matters can take their own course. In relation to the 90 days for the common assault, as with the Sheard matter, there is nothing to suggest that matter has any connection to the present matter. Yet had the matters been dealt with at the same time, it is unlikely the matter of common assault would add meaningfully to an aggregate sentence. I propose taking a lenient approach and backdating the sentence for the whole of the time spent in custody to date, a period of 741 days, or 2 years and 11 days. The sentence will date from 15 September 2024.

Section 21A(3)

For completeness, I note that in relation to each offender I have not expressly made reference to s21A(3) CSPA. Yet none of those factors lend much to an argument for mitigation; relevantly the risk of reoffending and the prospects of rehabilitation, have been considered, and mention has been made of the injuries of the victims, and the lack of remorse of the offenders. Matters of assistance, or a guilty plea, remorse, good character or provocation do not arise in a way that leads to mitigation.

Orders

Sheard

The offender is convicted of counts 2 and 4 on the indictment.

The offender is sentenced to an aggregate term of imprisonment to date from 25 June 2024 with a non parole period of 6 ½ years expiring on 24 December 2030, and with a balance of term of 3 ½ years expiring on 24 June 2034.

The offender will first be eligible to apply for parole on 24 December 2030.

Clarke

The offender is convicted of counts 2 and 4 on the indictment.

The offender is sentenced to an aggregate term of imprisonment to date from 15 September 2024 with a non parole period of 3 ½ years expiring on 14 March 2028, and with a balance of term of 2 ½ years expiring on 14 September 2030.

The offender will first be eligible to apply for parole on 14 March 2028.

Amendments

25 September 2026

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Coversheet - corrected case name.

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Decision last updated:

25 September 2026

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