

THE QUEEN v KILIC (M105/2016)

Court appealed from: Supreme Court of Victoria Court of Appeal
[2015] VSCA 331

Date of judgment: 8 December 2015

Date special leave granted: 28 July 2016

On 30 March 2015 the respondent, then aged 22, pleaded guilty to intentionally causing serious injury. The charge arose out of an incident where he doused his then girlfriend in petrol, and set her on fire. The respondent also pleaded guilty to two summary charges of 'use of a prohibited weapon', and 'dealing with suspected proceeds of crime'. He was sentenced to 14 years imprisonment for the charge of intentionally causing serious injury and 12 months imprisonment on each of the two summary charges, making a total effective sentence of 15 years imprisonment. A non-parole period of 11 years was fixed.

The respondent appealed to the Court of Appeal (Redlich & Whelan JJA) on the ground that the individual sentences, orders for cumulation and non-parole period fixed were manifestly excessive as the sentencing judge (Judge Montgomery) gave too much weight to aggravating factors and too little weight to mitigating factors, current sentencing practices, the applicable maximum penalties, and the principle of totality. The respondent complained that the sentence imposed on him was the second largest sentence ever imposed on a charge of intentionally causing serious injury, including those sentences imposed following a not guilty plea. He submitted that the fact that lesser sentences had been imposed in offending where the victim had sustained permanent and significant brain damage, further supported his complaint of manifest excess.

The Court noted that sentencing judges are required by s 5(2)(b) of the *Sentencing Act 1991 (Vic)* to have regard to current sentencing practice. While sentences imposed in other cases were not precedents, nor should they be considered to restrict the sentencing judge's instinctive synthesis, they did play a role in informing the instinctive synthesis, particularly insofar as such an overview may provide a general guide to current sentencing practices. Current sentencing practice, including an examination of comparable cases, can provide a relevant 'yardstick' by which a sentencing court may ensure consistency in sentencing and in the application of the relevant legal principles.

The Court found that while it was important to recognise the limitations on the use that may be made of the worst category offending authorities relied upon by the appellant, and notwithstanding the latitude that must be extended to sentencing judges, there was such a disparity between the sentence imposed and current sentencing practice as illustrated by the authorities, that they were satisfied that there had been a breach of the underlying sentencing principle of equal justice. The sentence imposed was unjustifiably disparate from other sentences imposed for worst category offending by offenders in comparable circumstances.

Their Honours noted that subtle distinctions between serious injuries should be eschewed but without minimising the horrific injuries suffered by the victim, there was a clear distinction to be made here from those cases where the victims had sustained lifelong major physical or mental disabilities. When this consideration was combined with the lack of premeditation, the respondent's genuine remorse, youth and lack of relevant prior offending, and prospects for rehabilitation, the conclusion was inescapable that the sentence imposed on the primary charge was well beyond a reasonable exercise of the sentencing discretion.

The appeal was allowed and the respondent was re-sentenced to a term of imprisonment of 10 years and 6 months on the charge of intentionally causing serious injury, 6 months' imprisonment on the charge of use of prohibited weapon, and 3 months imprisonment on the charge of dealing with property suspected of being proceeds of crime. He was given a total effective sentence of 10 years and 10 months imprisonment with a non-parole period of 7 years 6 months.

The proposed grounds of appeal include:

- The Court of Appeal erred in holding that a sentence of 14 years imprisonment imposed on a charge of intentionally causing serious injury was manifestly excessive in circumstances where:
 - (i) the maximum penalty prescribed for the offence was 20 years imprisonment;
and
 - (ii) the offence in question was properly categorised as falling within the "worst" category.