

***The Queen v Kilic* [2016] HCA 48 (7 December 2016) – High Court of Australia**

‘Appeal against sentence’ – ‘Appeal allowed’ – ‘Dousing with petrol and setting alight’ – ‘Drug misuse’ – ‘Intentionally causing serious injury’ – ‘Methylamphetamine’ – ‘Pregnancy’ – ‘Sentencing’ – ‘Worst category of offence’

Charges: Intentionally causing serious injury x 1; Using a prohibited weapon x 1; Dealing with suspected proceeds of crime x 1.

Appeal type: Prosecution appeal against sentence.

Facts: The defendant and victim were in a relationship; the victim was 12 weeks’ pregnant with the defendant’s child ([5]). The defendant pleaded guilty to dousing the victim with petrol and setting her alight ([10]). The victim’s injuries were ‘horrendous’ ([11]), and she terminated her pregnancy ([13]). The sentencing judge said that he found it hard to recall a more serious example of the charge in his 38 years of working in criminal law ([14]). The sentencing judge imposed a head sentence of 15 years with a non-parole period of 11 years ([1]). The Court of Appeal allowed the defendant’s appeal against sentence on the basis that there was ‘such a disparity between the sentence imposed and current sentencing practice’ ([1]).

Issues: Whether the Court of Appeal erred in holding that the sentence was manifestly excessive.

Decision and Reasoning: The High Court (Bell, Gageler, Keane, Nettle and Gordon JJ) overturned the Court of Appeal’s decision and reinstated the original sentence. The High Court discussed two aspects of the Court of Appeal’s decision: first, the Court of Appeal employing the term ‘worst category’ of offending; and second, the Court of Appeal’s interpretation of ‘current sentencing practice’.

First, the High Court held that it is an error to describe offences as being within ‘the worst category of cases’ if the offence does not warrant the maximum penalty ([19]), as the term is likely to cause confusion ([17]-[20]).

Second, the High Court remarked that 'current sentencing practice' is likely to change over time, 'current sentencing practices for offences involving domestic violence [may] depart from past sentencing practices for this category of offence because of changes in societal attitudes to domestic relations' [21]. The High Court found that the cases were too few to establish a pattern, one case was 12 years old, and most did not occur in a domestic violence context ([25]-[31]). The High Court said that 'violence perpetrated in the course of a domestic relationship against the offender's female partner ... involve the abuse of a relationship of trust', and such violence 'must steadfastly be deterred' ([28]). This was a distinguishing factor from cases with comparable serious injuries ([28]).