

***Connelly v Tasmania* [2015] TASCCA (29 June 2015) – Court of Criminal Appeal of Tasmania**

‘Aggravating factor’ – ‘Arson’ – ‘Attempted murder’ – ‘Denunciation’ – ‘Double jeopardy in sentencing’ – ‘Exposing children’ – ‘Manifestly excessive’ – ‘Non-parole period’ – ‘Physical violence and harm’ – ‘Risk factor - separation’ – ‘Sentencing’

Charges: Attempted murder (two counts)

Appeal Type: Appeal against sentence

Facts: The appellant’s relationship with his wife deteriorated after she told him that she had a sexual relationship with another man. She moved out of the family home. The appellant attempted to kill his two sons by blowing up the family car when they were sitting in it with him. He was unsuccessful but he caused an explosion and a very fierce fire. His two sons suffered life-threatening burns. Their injuries are ongoing and they will have ‘functional and cosmetic problems for life’. They are at risk of ongoing psychological harm. The impact on their mother was devastating. The trial judge was satisfied that the appellant intended to kill the boys to ‘deprive his wife of them’ or to ‘spite his wife’ ([29]). He was sentenced to 20 years’ imprisonment with a non-parole period of 15 years.

Issue: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld in respect of the non-parole period. Estcourt J (with whom Tennent J agreed) held that the head sentence of 20 years was not excessive. The offending was serious and both victims were young children. However, Estcourt J noted that there was one act that impacted both victims. While the sentence encompassed the entirety of the appellant’s criminal behaviour, he should not be sentenced for his conduct twice.

Counsel for the appellant submitted that even if the head sentence was not excessive, the non-parole period was excessive because of factors such as his lack of prior relevant offending, the unlikelihood of any re-offending ‘given the crime was directly related to his family circumstances’ and the fact that ‘it could not be said that the appellant’s “incurability” justified the setting of the non-parole period at 75% of the head sentence’ ([38]). Estcourt J (Tennent J agreeing) accepted these submissions notwithstanding the appellant’s almost complete lack of remorse and reduced the non-parole period to 12 years.

Wood J agreed with Estcourt J's reasoning with respect to the head sentence but dissented in regards to the non-parole period. At [7]-[21], her Honour engaged in general discussion about the applicable principles in determining the most appropriate non-parole period. Wood J then noted at [23] a number of considerations relevant to the nature of the crime. These included that it involved deliberate acts to kill two young children, the appellant's 'vindictive motive to inflict maximum anguish and emotional trauma upon his wife', his son's extensive injuries and degree of emotional suffering and physical pain, risks to their psychological well-being and the torment and harm suffered by his wife. It was appropriate for the sentencing judge to give effect to the aims of denunciation and retribution and, 'the goal of assuaging informed moral outrage of the community, reasserting society's values and giving proper weight to the harm done to the victims' ([24]).