

## ***Waddington v R* [2003] TASSC 21 (30 April 2003) – Supreme Court of Tasmania**

‘Manifestly excessive’ – ‘Murder’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Remorse’ – ‘Sentencing’

Charge: Murder

Appeal type: Appeal against sentence

Facts: The male appellant and the female deceased lived together for 10 or 12 years. The appellant drank 10 cans of beer on the afternoon of the murder. While the appellant prepared dinner, the deceased telephoned a friend. According to counsel for the appellant, these telephone calls occurred on a regular basis meaning that the deceased would often eat dinner cold or not eat dinner at all. The appellant had become frustrated with these calls over the years. The appellant finished making dinner and told the deceased it was ready. She told him that she would eat it later. The friend on the other end of the phone then heard the appellant become enraged. He yelled, ‘Get off that fucking phone ... I’ve been putting up with it for the last ten years ... I’m sick to death of the fucking phone.’ The telephone connection was broken. In a rage, the appellant killed his partner. He held a pillow over her face for about three to four minutes, smothering her until she died. An hour later he went to the police and confessed.

Issues:

1. Whether the sentence of 17 years’ imprisonment was manifestly excessive.
2. Whether the order fixing a non-parole period of 12 years was manifestly excessive.

Decision and Reasoning: The appeal was allowed on ground 2.

1. A sentence of 17 years’ imprisonment was not manifestly excessive in all the circumstances. Although the appellant expressed remorse, confessed to the crime quickly, and pleaded guilty, the appellant maintained his suffocation of the deceased for a prolonged period of time, the deceased did not provoke the appellant’s violence in any way, and the appellant had prior convictions ([25]-[27]).
2. However, a non-parole period of 12 years was harsh, particularly when considered in light of orders for parole eligibility in other murder cases. Taking into account the appellant’s genuine and deep remorse and his full acceptance of responsibility, a non-parole period of 10 years was substituted ([30]).