

***Vaughan v R* [2020] NSWCCA 3 (6 February 2020) – New South Wales Court of Criminal Appeal**

‘Application for extension of time for leave to appeal’ – ‘Controlling and obsessive behaviour’ – ‘Following, harassing and monitoring’ – ‘Motor vehicle’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Separation’ – ‘Visa’ – ‘Weapon’

Charges: Causing grievous bodily harm with intent to murder; Wounding with intent to cause grievous bodily harm

Case type: Application for extension of time for leave to appeal against aggregate sentence

Ground of appeal: His honour erred in the notional accumulation of indicative sentences in determining the aggregate sentence

Facts: The applicant man and female first victim met shortly after she moved from Columbia in 2011 and they married in 201. They had separated having had ‘relationship difficulties’ at the time of the offences. After a series of arguments, the first victim moved out of the marital home at his demand. A few days later, the applicant began texting her and her friend, then when asked not to text her emailed the first victim’s sister (copied to the victim) and accused the first victim of fraudulently obtaining a visa and of trying to steal money from him and his family. He also stated that he "hope[d] [the victim] were to die in a car accident and that she has to fly home the body" [20]. The first victim subsequently made several statements to police leading up to the offending "in case something happened to [her]" and that she felt vulnerable and ‘unsafe to go outside’ and she was worried about what the applicant would do "because he is very controlling" [21-2]. The Applicant was also found to have searched for the first victim online, her place of work and the phrase ‘carotid artery neck’ [26]. This search history was relied upon by the Crown to contend that the offences were premediated and that the "Applicant armed himself with a knife intending to cut the victim’s carotid artery in her neck with an intention to kill" [26].

On the day of the offence, the Applicant had waited for the first victim to arrive at work. When she arrived, he approached her, produced a knife from his pocket and "lunged at the victim’s head and neck area, stabbing her in the forehead, the left-chest area and the left arm which she had raised to protect herself" [32]. One of her colleagues approached the Applicant and told him to stop. The Applicant then stabbed the colleague in the skull, causing immediate bleeding and a bone fracture. The Applicant then ran to his vehicle and accelerated quickly towards the first victim, who had collapsed on the ground, and crushed her between the bumper bar of his vehicle and another parked vehicle before driving away.

The first victim suffered abrasions and bruising, multiple fractured ribs, fractures to the left scapula, several vertebrae and pelvis. She had stab wounds to her chest and arm and a laceration to her left forehead. She was hospitalised for two weeks, a number of days in intensive care and required surgery for several injuries. The second victim required sutures for a laceration as a result of the stab wound to the top of her head and the injury caused a mildly displaced fracture of the skull.

The Applicant admitted that he brought the knife with him "intending to cut [his] throat in front of [the victim]" but instead "completely lost it" during a police interview. He had a major depressive illness but no evidence of psychosis or hallucinations and there was expert evidence he was capable of forming and intention to kill, wound and/or do grievous bodily harm.

The applicant had no prior criminal history. He pleaded guilty and was sentenced to an aggregate sentence of 21 years comprising a non-parole period of 14 years commencing on 19 August 2015 and expiring on 18 August 2029, with a balance of term of seven years commencing on 19 August 2029 and expiring on 18 August 2036 [4]. The sentencing Judge gave the following sentence indications:

- (a) Count 1 - the offence under s.27 Crimes Act 1900 of causing grievous bodily harm with intent to murder - imprisonment for 17 years and six months with a non-parole period of 12 years;
- (b) Count 3 - the offence under s.33(1)(a) Crimes Act 1900 of wounding with intent to cause grievous bodily harm - imprisonment for 11 years and three months with a non-parole period of eight years.

The applicant lodged his Notice of Intention to Seek Leave to appeal in time on 1 May 2019 and it was extended until 1 February 2019. Notice of Application for leave to Appeal was not lodged until 30 August 2019. The Crown submitted that the extension of time should not be granted as there was not merit in the ground of appeal.

Held: The ground of appeal lacked sufficient merit to warrant and extension of time to bring an application for leave to appeal against sentence [114]. Johnson J (Macfarlan JA concurring) provided that "the Applicant's submission in support of [the] ground of appeal are based upon a misconception concerning the operation of the statutory provisions providing for aggregative sentencing in this State" [87]. "The principles of sentencing concerning accumulation and concurrency at general law, as explained in *Pearce v The Queen*, have no application where an aggregate sentence is used by the sentencing Court." [91] The sentencing judge was found to have correctly complied with the statutory provisions as well as to have taken a "detailed, careful and balanced approach in reaching sentence in this case" [113].