

***R v Hutchinson* [2018] QCA 29 (9 March 2018) – Queensland Court of Appeal**

‘Domestic violence as an aggravating factor’ – ‘Imprisonment’ – ‘Murder’ – ‘Retrospective operation of sentencing considerations’ – ‘Sentencing’

Charges: Murder x 1; Fraud x 1;

Appeal type: Appeal against sentence.

Facts: The deceased and the appellant had been married for a lengthy period. The fraud charge occurred when the appellant mortgaged the family home by using a third party to pretend to be the deceased ([5]). The deceased disappeared, and the appellant was charged with her murder. The appellant deceived the deceased’s family and friends in the days after she disappeared and never revealed how she died or the whereabouts of her body ([6]-[12]). At trial, the appellant was acquitted of murder, but convicted of manslaughter. He pleaded guilty to the fraud charge on the first day of the trial ([3]). The appellant was sentenced to 15 years and six months, and the manslaughter offence was declared a serious violence offence and a domestic violence offence under s 9(10A) of the *Penalties and Sentences Act 1992* (Qld) (‘the Act’).

Issues: Whether the sentencing judge erred in retrospectively applying s 9(10A) of the Act or whether the sentence was otherwise manifestly excessive.

Decision and Reasoning: The appellant argued that s 9(10A) of the Act, which has the effect that a context of domestic violence is an aggravating factor in sentencing, should not apply because it should not have retrospective operation ([24]). The Court held that the section is a procedural provision and does not attract the common law presumption against retrospectivity. Therefore, the section applies to all sentencing from its commencement ([43]).

Justice Mullins, Fraser and Morrison JJA agreeing, stated that the sentence was not manifestly excessive, taking into account the context of domestic violence, the appellant’s deceit in impersonating the deceased and failing to disclose the whereabouts of the deceased’s body, his lack of plea of guilty, his lack of remorse and the unchallenged finding that the deceased died a violent death ([53]).