

## ***Vital v DPP (Qld)* [2019] QCA 290 (6 December 2019) – Queensland Court of Appeal**

‘Appeal’ – ‘Assault’ – ‘Bail’ – ‘Physical harm and violence’ – ‘Separation’ – ‘Weapon’

Charges: Murder x 1; assault occasioning bodily harm while armed and in company x 1; burglary at night x 1; common assault x 1; and robbery with personal violence as a domestic violence offence x 1.

Proceedings: Appeal against refusal to grant bail.

Facts: The accused was a 19-year-old male with no prior criminal history. He was in an abusive relationship with the daughter of a man he was charged with murdering at the time of offending.

On the day of the offending, the daughter told the accused their relationship was over. That night, the appellant was in the daughter’s bedroom when she came home but was asked to leave by her flatmate. After leaving the apartment he began to make a nuisance of himself, causing the flatmate to call the daughter’s father (the victim) who soon arrived with another man. The appellant fled by car with his companion and was followed by the victim and the other man. The appellant eventually stopped the car and his companion went onto the road and took out a pistol which he pointed at the victim’s car. The victim’s companion approached the appellant, who was still in the car, and began to punch the window.

The appellant’s companion hit the victim with his pistol and knocked him unconscious. This blow ultimately killed the victim. The appellant and his companion then took off, briefly returning to the daughter’s home and punching her two or three times in the face before fleeing again.

The appellant submitted that the judge who refused his bail application ‘must not have given consideration to the appellant’s youth, his lack of criminal history and, as the appellant asserts, the weakness of the Crown case against him, the weight that these matters deserved’. He submits that it should be inferred that Justice Davis made an error, and in oral argument, he has also submitted, that Justice Davis must have overlooked the extraordinary delay of about 18 months until there can be a trial in this matter. (per Sofronoff P at [7-8]).

Issue: Whether to grant leave to appeal.

Decision and reasoning: Sofronoff P stated that ‘in an appeal against a discretionary decision, it is not a valid ground of appeal to contend that the judge did not give sufficient weight to a relevant factor or gave too much weight to a factor. Weight is a matter for the decision-maker alone’ [7]. His Honour thus dismissed the appellant’s related claims.

The submission that the judge must have overlooked the delay was not accepted as a delay of that order was to be expected [12]. Furthermore, regarding the appellant's claim of error, Sofronoff P concluded that '[i]n an application for bail, the appellant's actions after he returned to Jane's house could, on their own, justify a refusal of bail. When they are taken into account in a case in which the applicant is also awaiting trial for murder, refusal of bail can hardly be regarded as so unreasonable that an error of some kind in the judge's reasoning has to be inferred. Yet that is what the appellant must show in order to persuade this Court to disturb the decision of Justice Davis. In my view, he has failed to do so, and the appeal should be dismissed' [13].