

***R v Blockey* [2021] QCA 77 (21 April 2021) – Queensland Court of Appeal**

‘Application for leave to appeal against sentence’ – ‘Manifest excess’ – ‘Manslaughter’ – ‘Parole eligibility’ – ‘Victims as (alleged) perpetrators’ – ‘Weapon’

Charges: Manslaughter (domestic violence offence) x 1.

Proceedings: Application for leave to appeal against sentence.

Facts: The male deceased had committed acts of domestic violence against the female applicant during their relationship. He was the subject of a domestic violence order. The applicant stabbed the deceased with a hunting knife. She pleaded guilty and was sentenced to 9 years imprisonment, with parole eligibility after 3 years and 9 months imprisonment.

Grounds of appeal: Whether refusal to give parole eligibility date at one third of the sentence rendered the sentence manifestly excessive.

Held: Leave to appeal against sentence granted. Appeal against sentence allowed. Parole eligibility date was set on 22 April 2021, rather than 22 January 2022.

The Court noted the sentencing judge’s remarks, including the relevance of the applicant’s history as a repeated victim of domestic violence in sentencing:

The sentencing Judge found that: “The fact that you were such a victim of domestic violence as well as a perpetrator of domestic violence is, to my mind, sufficient to enable me to reach the conclusion that it is not reasonable in the present circumstances to treat the fact that your offending was a domestic violence offence as an aggravating feature.

Nevertheless, the sentencing judge’s conclusion that “the applicant’s cooperation was tempered by her failure to provide any comprehensive, reliable detail concerning the stabbing” was inconsistent with the conclusion that there was insufficient evidence to find that “the applicant ‘engaged in consciously-informed obfuscation or denial’ designed to minimise culpability.” The applicant was under no obligation to provide a comprehensive, detailed account of the sequence of events concerning the stabbing. She accepted unlawfully causing the victim’s death by stabbing him when she pleaded guilty to his manslaughter.

In these circumstances, finding that the applicant's cooperation in entering a timely plea of guilty was to be tempered by her failure to provide such an account of the stabbing was a misapplication of sentencing principles, particularly where there was an acceptance that the applicant was sincerely remorseful for her conduct. It was therefore necessary to re-sentence the applicant. Parole eligibility was fixed after having served 3 years of the sentence.