

***R v Peet* [2018] SASCFC 91 (5 September 2018) – South Australia Supreme Court (Full Court)**

‘Children’ – ‘Exposing children to domestic and family violence’ – ‘Physical violence and harm’ – ‘Sentencing’

Charges: Murder.

Appeal type: Appeal against sentence.

Facts: The circumstances of the offending were that early in the morning, following an argument with the respondent’s partner, during which she slapped, kicked and hit him with a vacuum cleaner pole, the respondent struck her with a crow bar at least six times. The respondent dragged her body to the laundry where he placed a cable tie around her neck and tightened it. The combined effect of the blows and the compression of her neck caused her death. Not long after this occurred the children woke. The respondent made breakfast for them. He then went outside and smoked a cigarette before returning inside. There was a knock at the door. The respondent put the children in their rooms and told them to be quiet. He did not answer the door and the people knocking went away. At some point, and possibly whilst the people were still at the front door, the respondent went back to each child. The respondent restrained the six-year-old with cable ties and placed a sock in her mouth, fixing it in position with packing tape. He placed a cable tie around her neck and tightened it. Her death was caused by the combined effect of suffocation and asphyxiation. The respondent also restrained the five-year-old with cable ties and asphyxiated him. His tongue was bruised suggesting that prior to death he too may have had something placed in his mouth obstructing his airway.

The sentencing Judge sentenced the respondent to life imprisonment with a non-parole period of 30-years to commence on the day the respondent was taken into custody. The sentencing Judge accepted that the respondent was experiencing a degree of dissociation when he killed the children. On appeal, the DPP contended that the 30-year non-parole period was manifestly inadequate, and submitted that the inadequacy was so great, having regard to the gravity of the offending, that the Court should increase the non-parole period to ensure the maintenance of adequate standards of punishment for the offence of murder. The respondent conceded that the non-parole period was manifestly inadequate and that it should be set aside and a new non-parole period fixed.

Issues: Whether the sentence was manifestly inadequate.

Decision and reasoning: The Court took into account the respondent’s personal circumstances ([87]), loss felt by the family ([85]), and the value of human life. At [83]-[84], the Court noted that –

'A just sentence in the present case must accord due recognition to the human dignity of three victims... It has been said that the value of human life is intrinsic. The murderer denies their victim life and all the potentialities that accompany living which are of inestimable worth. Speaking generally, that denial, that exaction, cost or loss, is magnified where the victim is a child. The younger and more innocent the child the more the murderer repulses us as a community and the more grave or heinous the act of murder because of the value we place on life.'

The punitive, protective and rehabilitative purposes of fixing a non-parole period were also relevant. The punitive purpose in particular reflected the gravity of the offending. The sentencing Judge found that the respondent intended to kill each victim. As King CJ said in *R v Stewart* (1984) 35 SASR 477, multiple murders fall into the worst category of offending. Therefore, condign punishment was afforded great weight. The Court also noted that the respondent should not be left without hope for spending some time in the community again in the future, as this promotes rehabilitation. The murder was not premeditated in the conventional sense. The murder also occurred in the context of a relationship characterized by domestic violence. The murder was described at [78] as being brutal and the final act cold and lacking in humanity. Citing *Munda v Western Australia* (2013) 249 CLR 600, 'A just sentence must accord due recognition to the human dignity of the victim of domestic violence and the legitimate interest of the general community in the denunciation and punishment of a brutal, alcohol-fuelled destruction of a woman by her partner'. Although the sentencing Judge found that the respondent suffered a degree of dissociation at the time of the incident, this neither prevented him from forming the intent to kill nor did it prevent him from understanding the nature and quality of his actions. It helped him to depersonalize his two children, but did not prevent him taking action which he considered necessary for the purposes of his own self-preservation ([80]).

The Court found that the determination of a non-parole period in this case could not be reduced to a formula and that the totality principle was applicable to the setting of a non-parole period in relation to a life sentence for murder. The Court allowed the appeal and held that the non-parole period fixed by the sentencing Judge was manifestly inadequate. A non-parole period of 36 years was substituted. Although the respondent was entitled to a discount of up to 10% on the basis of his guilty pleas, to allow the respondent any further reduction would result in a non-parole period unacceptably disproportionate to the gravity of the offending which would vindicate the dignity of the victims ([90]).