

***Milosev v The Queen* [2019] VSCA 121 (3 June 2019) – Victorian Court of Appeal**

‘Breaches of community correction order’ – ‘Domestic violence’ – ‘Drug dependency’ – ‘History of abuse of accused’

Charges: Aggravated burglary x 1; theft x 1; recklessly causing serious injury x 1; conspiracy to commit theft x 1; breach of community correction order (CCO) x 1.

Case type: Appeal against sentence.

Facts: The applicant pleaded guilty to charges of aggravated burglary, theft, recklessly causing serious injury and conspiracy to commit theft. She was ordered to serve a community correction order (CCO), but was later charged with breaching that order and the mandatory terms contained in it. The applicant was sentenced to a total effective term of 15 months’ imprisonment, with a non-parole period of 9 months.

Issue: The applicant sought leave to appeal against the sentence on two grounds. The first ground was that the sentences imposed were manifestly excessive. It was also contended that the sentencing judge failed to give sufficient weight to 1) the impact of family violence suffered by the applicant, which compromised her ability to comply with the CCO; and 2) the applicant’s prospects of rehabilitation. The second ground was that the sentencing judge erred by not deferring sentencing before making a finding that the applicant was ‘unwilling and unable’ to comply with a further CCO.

Held: The application for leave to appeal against the sentence was refused. The applicant’s counsel contended that the applicant’s capacity to fully comply with the terms of the CCO was affected by the domestic violence perpetrated on her by her partner ([20]). It was argued that the applicant was the ‘captive of her partner throughout the term of the [CCO]’, and found it difficult to leave him and the drug infected environment in which she was then living ([25]). Although the Court recognised that the applicant was clearly subjected to domestic violence by her ex-partner, their Honours noted that the materials placed before the sentencing judge did not sufficiently explain her substantial and repeated failures to comply with the conditions of her CCO ([48]). While it was understandable that the applicant, under the pressure of the domestic circumstances in which she was living, relapsed into drug use, it appeared that she sometimes managed to remove herself from the abuse. Taking those matters into account, and giving full weight to the impact of her partner’s conduct towards her, their Honours did not accept that the sentencing judge erred in concluding that the applicant was either unwilling or unable to comply with a further CCO ([49], [56]). No sufficient circumstances were put to the sentencing judge which would require him to defer sentencing ([56]).