

## ***Kiril (a Pseudonym) v The Queen* [2019] VSCA 133 (14 June 2019) – Victoria Court of Appeal**

‘Delay’ – ‘Elder abuse’ – ‘Guilty plea’ – ‘Mitigating factors’

Charges: Reckless conduct endangering life x 1.

Case type: Application for leave to appeal against sentence.

Facts: The applicant and his wife pleaded guilty to a charge of reckless conduct endangering life. The applicant’s mother (victim) died at age 83. According to an expert’s opinion, she was the victim of severe neglect or elder abuse. Based on the medical evidence, the applicant and his wife severely neglected the victim for an extended period of time. The victim was frail and depended on them for care. The sentencing judge sentenced the applicant to 18 months imprisonment, with a non-parole period of 12 months. There was a 5 year delay from the date of the victim’s death in 2013 to the date of sentencing in 2018.

Issue: The applicant sought leave to appeal against the sentence on the ground that it was manifestly excessive in all circumstances. It was also argued that the sentencing judge gave insufficient weight to delay.

Held: The Court refused leave to appeal. Not every case of delay warrants a reduced sentence ([37]). The Court considered the circumstances of the offence and those of the applicant, as well as the aggravating and mitigating features, including the delay ([41]). The delay was found to be considerable and would ordinarily be a substantial mitigating factor. However, evidence did not suggest that the applicant suffered any stress or anxiety due to the delay ([45]).

Even though the applicant had taken steps to control his substance abuse, he failed to exhibit any remorse, as he lacked insight into his offending and blamed others for the ill-treatment of his mother. He was of average intelligence and had no relevant mental disorder or other condition that may have affected his moral culpability ([46]). The Court emphasised the distressing circumstances surrounding the victim’s death – she was 34kg and covered in sores – which demonstrated the applicant’s ‘callous disregard for her welfare’ ([48]).

Therefore, having regard to the objective seriousness of the offending and the few mitigating factors, the Court held that sentence imposed was not manifestly excessive, even though it might be considered lenient ([49]).