

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

‘Application for leave to appeal against sentence’ – ‘Delay’ – ‘Elder abuse’ – ‘Manifestly excessive’

Offences: Reckless conduct endangering life

Proceedings: Appeal against sentence

Issues: Whether the sentence was manifestly excessive, in particular that the Learned Sentencing Judge gave insufficient weight to the delay in these proceedings being finalised.

Facts: The male appellant and his wife severely neglected the 83-year-old victim, the appellant’s mother, who relied entirely upon them for care. The victim previously lived in a supported residential service where she was very healthy and active, and would routinely visit the doctor. However, her visits to the doctor (which included filling her prescriptions) declined and ceased altogether when she returned to live with the appellant. The victim was found dead in her bed in squalid conditions. She died as a result of bronchopneumonia in a setting of cerebral infarction, weighing only 34kg and covered in bruises and abrasions. The appellant plead guilty to the charges and was sentenced to 18 months’ imprisonment, with a non-parole period of 12 months. The appellant appealed this sentence on the ground that it was manifestly excessive because the sentencing judge failed to give sufficient weight to the delay in the proceedings being finalised.

Judgment: The court refused to allow the appeal, holding that the sentence was not manifestly excessive but could even be regarded as "lenient" [49], [54]. The court noted that "the proper approach for this Court to adopt is to consider the circumstances of the offence and those of the applicant, instinctively synthesising the aggravating features and those going in mitigation – including the considerable delay – to determine whether the sentence imposed by the judge is wholly outside the range open in the sound exercise of discretion" [41]. While the delay had been considerable (five years from the offending to sentencing) and the court held that "ordinarily, a delay of that order would constitute a very powerful mitigating factor" [43], in this case, the appellant did not have a lengthy period of rehabilitation (the court accepting that he had developed no insight into his offending and did not have good prospects of rehabilitation) nor did he suffer stress or anxiety as a result of the delay [43]-[45]. Beyond the delay, the court emphasised, there was little that mitigated the offence [46].

The court noted the seriousness of the offending, holding that the victim was in such poor condition "because of the applicant's callous disregard for her welfare" [48]. It further accepted that the appellant's treatment of his mother was "cruel, heartless and inhumane" [48]. Forrest JA held that the appellant "admitted he foresaw that his conduct placed [the victim] at an appreciable risk of death, and yet he continued to neglect her ... I consider that conduct to be truly reprehensible" [53].