

***Sawyer-Thompson v The Queen* [2018] VSCA 161 (22 June 2018) – Victorian Court of Appeal**

‘Battered woman syndrome’ – ‘Emotional and psychological abuse’ – ‘Manslaughter’ – ‘Physical violence and harm’ – ‘Sentencing’

Charges: Defensive homicide x 1

Appeal type: Appeal against sentence

Facts: The female appellant had been in an abusive and violent relationship with her male partner for 12 months prior to her offending. Her partner threatened to kill her family unless she killed the victim. Acting under the fear of this threat, she killed the victim. The appellant pleaded guilty to defensive homicide.

Issues: Whether the sentence imposed was manifestly excessive.

Decision and Reasoning: Maxwell ACJ and Tate JA held that the sentence of 10 years’ imprisonment with a non-parole period of seven years was manifestly excessive. The appellant was re-sentenced to six and a half years’ imprisonment, with a non-parole period of five years.

The sentencing judge accepted that the killing took place at the direction of the appellant’s violent and abusive partner who had threatened to kill her family unless she killed the victim. She had been subjected to ‘repeated acts of violence, degradation and humiliation at the hands of her partner, who was... a highly dangerous person’. The fact that she proceeded to kill the victim rather than attempting to flee, and that she used excessive violence, ‘could only be understood through the lens of the sustained family violence she had experienced’ ([7]).

Maxwell ACJ and Tate JA held that the sentence imposed reflected a mischaracterisation of the gravity of the offending and of the appellant’s culpability. Insufficient weight was also given to the mitigating factors of cooperation with authority and youth ([65]).

The appellant’s undertaking to assist, and the provision of her statement, reflected remorse and a genuine desire to bring a person to justice ([55]). As a result, discount for cooperation was necessary because ‘there [was] some personal risk’ to the applicant, as a result of which she had already spent some time in protective custody.

Beach JA held that whilst the sentence was stern, it was not manifestly excessive ([133]).