

***Tan v The Queen* [2019] VSCA 226 (14 October 2019) – Victorian Court of Appeal**

‘Manifestly inadequate’ – ‘Physical harm and violence -separation’ – ‘Sentencing’ – ‘Strangulation’

Charges: Recklessly causing serious injury x 1

Proceedings: Application for leave to appeal against sentence

Facts: The applicant was sentenced to 5 years 6 months imprisonment with a non-parole period of 3 years 6 months. The applicant sought leave to appeal against sentence on the ground that the sentence imposed was manifestly excessive given that the offending was not at the median of offending for the type of offence.

The victim of the incident was the applicant’s de facto partner. Around the time of offending, the applicant sent the victim a series of text messages asking for money, which the victim refused. The applicant was angered by the refusal and when he returned to the couple’s home, he started verbally abusing her. He pushed her off the bed, injuring the victim’s knee, before pulling back on to the bed with his hand around her throat. Threatening to kill the victim, the applicant obtained a knife from the kitchen and pushed it against the victim’s throat while she was still on the bed. This caused a superficial laceration. The owner of the apartment became aware of the altercation and called the police. While the owner was on the phone the victim tried to push the applicant off her, causing him to slash her on the left arm with the knife.

The applicant pleaded guilty prior to the committal hearing despite previously denying he was the aggressor. The judge "accepted this plea as being ‘indicative of some remorse’" [19].

Issue: Whether sentence was manifestly excessive

Decision and reasoning: The sentence was manifestly excessive. A sentence of 4 years 3 months was substituted.

There was no finding that the wound to the victim’s arm was deliberately inflicted, unlike the laceration to her neck. When compared to more serious cases (Marrah, Nolan [63]) of the same offence this was significantly less serious. Ashley and Weinberg JJA state that ‘it is the fact that, despite the limited utility of raw sentencing statistics, the sentence imposed in this case was not far short of twice the median length of imprisonment for the offence over the 2016/2017 year, and that over the five-year period ending 2017 only a very small number of those imprisoned for this particular offence were subject to a sentence exceeding five years. Underlining the severity of the sentence imposed here, by no means did all persons sentenced for this offence in the five year period receive a custodial disposition.’[65]

Nevertheless, the court also pointed out that despite the sentence being manifestly excessive, this conclusion "does not gainsay the need for sentences for this offence, committed in a domestic setting, to reflect the need for general deterrence, specific deterrence ... and protection of the community as pertinent sentencing considerations" and noted that "sentences for this offence, committed in a domestic setting, have increased in recent years." ([63]).